

No. 2864

6

United States
Circuit Court of Appeals
For the Ninth Circuit.

NG CHOY FONG,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
District Court of the United States for the
Northern District of California,
First Division.

Filed

JAN 15 1917

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For the United States: UNITED STATES ATTORNEY.

For the Defendant: GEORGE J. HATFIELD,
Esquire.

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5779.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FONG,

Defendant.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

Please make return to the Writ of Error issued by transmitting to the United States Circuit Court of Appeals for the Ninth Circuit true copies of the following, viz.:

The Indictment.

Minutes Showing Arraignment and Plea.

Minutes of Trial.

Verdict.

Judgment.

Petition for Writ of Errors.

Assignment of Errors.

Writ of Errors.

Order Allowing Writ of Errors.

Bill of Exceptions.

Also transmit original Writ of Error and Original Citation thereon, and certify to above as being the return to the Writ of Error, and also certify the admission of receipt of papers.

Dated at San Francisco, California, this 31st day of August, A. D. 1916.

GEO. J. HATFIELD,
Attorney for Defendant.

[Endorsed]: Filed Aug. 30, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

Indictment.

Violation Act Feb. 9, '09, as Amended Jan. 17, '14.

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

At a stated term of said court begun and holden at the city and county of San Francisco, within and for the State and Northern District of California on the second Monday of July, in the year of our Lord one thousand nine hundred and fifteen.

The Grand Jurors of the United States of America, within and for the State and District aforesaid, on their oaths present: THAT

NG CHOY FUNG and LO KEUN,
each late of the State and Northern District of California, heretofore, to wit, on or about the twelfth day of August in the year of our Lord one thousand nine hundred and fifteen, at San Francisco, in the

*Page-number appearing at foot of page of original certified Transcript of Record.

State and District aforesaid then and there being, did then and there wilfully, unlawfully, fraudulently and knowingly receive, conceal and facilitate the transportation and concealment after importation, of certain opium, to wit, six hundred and sixty (660) five-tael cans of opium prepared for smoking purposes, which as they, the said Ng Choy Fung and Lo Kuen and each of them, then and there well knew, had been imported into the United States contrary to law.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

JNO. W. PRESTON,
United States Attorney.

[Endorsed]: A True Bill. Fred W. Boole, Foreman Grand Jury. Presented in Open Court and Filed Sept. 27th, 1915. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 2d day of October, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 5779.

UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG and LO KUEN.

**Minutes of Court—October 2, 1915, Arraignment
and Plea.**

This case came on regularly this day for the arraignment of defendants Ng Choy Fung and Lo Kuen upon the Indictment herein against them. Mrs. A. A. Adams was present as Assistant United States Attorney and Wm. H. Cook, Esq., as attorney for said defendants. Thereupon said defendants were duly arraigned upon the Indictment herein against them, thru interpreter D. D. Jones, stated their true names to be as contained therein, waived reading of said Indictment and then each of said defendants plead Not Guilty of the offense charged in the Indictment herein against them, which pleas the Court ordered, and the same are hereby, entered. Thereupon the Court ordered that this case be, and the same is hereby, continued until October 9th, 1915, to be set for trial of said defendants upon said Indictment. [3]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 20th day of December, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 5779.

UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG et al.

Minutes of Court—December 20, 1915, Trial.

This case came on regularly this day for the trial of defendants herein, Ng Choy Fung and Lo Kuen, each of whom were present in court with their attorney, Wm. H. Cook, Esq. M. A. Thomas, Esq., was present as Assistant United States Attorney. After hearing Mr. Cook and Mr. Thomas, the Court ordered that said trial do now proceed so far as the impanelment of a jury and that the defendants herein may leave the court room and that said jury be impaneled during their absence. Accordingly, the hereinafter named persons were duly drawn by lot from the regular Panel of Trial Jurors of this court, sworn and examined, to wit, E. W. Brown, Harry E. Leland, accepted, Wm. J. O'Donnell, Wm. W. Alverson, challenged for cause by defendants, allowed by the Court and ordered Jurors excused, John Stanton, John H. Clendenning, Squire V. Mooney,

and Fred'k C. Clift, peremptorily challenged by the United States and Jurors excused, Fred'k R. Sherman, M. J. Calnan, John B. Murphy and Philip S. Baker, peremptorily challenged by defendants and Jurors excused, Edwin E. Cox, H. M. Alexander, Oscar P. Nauert, Moses Stern, Dixwell Davenport, A. D. Shepard, Watson Mallott, Constant Messe, Frederick Meyers and Richard J. Brode, accepted. Thereupon twelve (12) persons having [4] been accepted as Jurors to try the defendant herein, were duly sworn accordingly, to wit:

E. W. Brown,	Dixwell Davenport,
Harry E. Leland,	A. D. Shepard,
Edwin E. Cox,	Watson Mallott,
H. M. Alexander,	Constant Messe,
Oscar P. Nauert,	Frederick Meyers,
Moses Stern,	Richard J. Brode.

Thereupon the Court ordered that the further trial of defendants herein be, and the same is hereby, continued until December 21st, 1915, at 10 o'clock A. M., and that all parties be and appear accordingly. Further ordered, on motion of Mr. Thomas, that all persons subpoenaed as witnesses herein be, and they are hereby, excused until December 21st, 1915, and that they be and appear on said day accordingly. [5]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 21st day of December, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 5779.

UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG et al.

Minutes of Court—December 21, 1915, Trial.

This case came on regularly this day for the further trial of defendants Ng Choy Fung and Lo Kuen upon the Indictment herein against them. Said defendants were present in court with their attorney, Wm. H. Cook, Esq. M. A. Thomas, Esq., was present as Assistant United States Attorney. The jury heretofore sworn to try said defendants was present and complete. Mr. Thomas made statement to the Court and Jury and called E. E. Enlow, John Toland and George W. Desmond, each of whom were duly sworn and examined on behalf of the United States, and introduced in evidence certain trunk, box, two (2) suit cases and satchel or case containing cans of opium, which were filed and marked U. S. Exhibit No. 1, and rested. Mr. Cook then called Lo Kuen (defendant), and Lee Kum, each of whom were duly sworn and examined on behalf of defend-

ants, thru Chinese Interpreter D. D. Jones, and Lee Hong, who was duly sworn and examined on behalf of said defendants, and recalled Lo Kuen, who was further examined through Interpreter D. D. Jones, and Dr. J. E. Gardiner, who was duly sworn accordingly. Ng Chong Fung (defendant) was duly sworn and examined on behalf of defendants, thru interpreter D. D. Jones. Thereupon the hour of adjournment having arrived, the Court ordered that the further trial of this case continue until December 22d, 1915, at 10 o'clock A. M., and that all parties be and appear on said day accordingly. [6]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 22d day of December, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 5779.

UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG et al.

Minutes of Court—December 22, 1915, Trial.

This case came on regularly this day for the further trial of defendants Ng Choy Fung and Lo Kuen upon the Indictment herein against them. Said defendants were present in court with their Attorney,

Wm. H. Cook, Esq. M. A. Thomas, Esq., was present on behalf of the United States as Assistant United States Attorney. The jury heretofore sworn herein was present and complete. Defendant Ng Choy Fung, resumed the stand and was further examined. Mr. Cook then rested case on behalf of defendants. Mr. Thomas presented and introduced in evidence certain gas bills, which were filed and marked U. S. Exhibit No. 2, and called in rebuttal Dr. J. E. Gardiner, who was duly sworn and examined on behalf of the United States, and thereupon rested case on behalf of the United States. The case was then argued by Mr. Thomas and Mr. Cook and submitted. Thereupon the Court proceeded to instruct the jury herein, who after being so instructed, retired at 1 o'clock and 5 minutes P. M., to deliberate upon their Verdict and subsequently returned into court at 4 o'clock P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present and in answer to question of the Court stated they had agreed upon a Verdict and presented written [7] verdicts, which the Court ordered filed and recorded and which Verdicts are as follows:

"We, the Jury, find Ng Choy Fung, the defendant at the bar Guilty.

H. E. LELAND,
Foreman."

"We, the Jury, find Lo Kuen, the defendant at the bar Not Guilty.

H. E. LELAND,
Foreman."

Thereupon, after hearing counsel, the Court ordered that this case be, and the same is hereby, con-

tinued until January 3d, 1916, for the pronouncing of Judgment upon defendant Ng Choy Fung and that defendant Lo Kuen be, and she is hereby, discharged from further custody and that she go hence without day. Further ordered that defendant Ng Choy Fung go at large upon the bond heretofore given and filed for her appearance herein until December 23d, 1915, at noon and that in the meantime she give and file a new bond in the sum of seven thousand five hundred (\$7,500) dollars, for her appearance for Judgment as aforesaid and in default of the giving of such bond she be committed to the custody of the United States Marshal for this District and that Mittimus issue accordingly. Further ordered, on motion of Mr. Thomas, that all the original exhibits introduced and filed herein be forthwith returned to the United States Attorney, or assistant, and accordingly said exhibits were returned to Mr. Thomas in open court.

During the deliberations of the jury herein, it appearing to the Court that said jury should be furnished with dinner, the Court ordered that the United States Marshal for this District furnish the jury herein and two bailiffs with dinner at the expense of the United States. [8]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5779.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FUNG and LO KUEN,

Defendants.

**Bill of Exceptions on Behalf of Defendant Ng Choy
Fung.**

BE IT REMEMBERED that heretofore the grand jury of the United States, in and for the Northern District of California, did find and return in the above-entitled court its indictment against the defendant Ng Choy Fung, and thereafter the said Ng Choy Fung appeared in said court, and, having duly pleaded as shown by the record herein, and the cause being at issue the same came on for trial before the Honorable Maurice T. Dooling, District Judge, and a jury duly empaneled, the United States being represented by M. A. Thomas, Esq., and Mrs. Annette A. Adams, Assistant United States Attorneys, and the defendant Ng Choy Fung being represented by W. Hoff Cook, Esq., the following proceedings were had:

Testimony of E. E. Enlow, for the Government.

E. E. ENLOW, a witness called on behalf of the United States, being first duly sworn, testified as follows:

(Testimony of E. E. Enlow.)

I reside in San Francisco, am inspector of customs, have been over 23 years. As inspector of customs, it is a [9] part of my duty to look for and make seizures of opium found here. I was custom inspector on the 12th of August, 1915. Now I know these two defendants, Ng Choy Fung and Lo Kuen. I saw them on that day. About ten o'clock on the night of the 12th of August, 1915, we noticed a light in room 2 at 1137 Stockton street. In accordance with some things that we had learned while investigating opium cases, that if we ever saw that light there it would be there in connection with an opium deal, and an investigation should be immediately made. We saw this light at about ten o'clock. Inspector Toland and myself then hunted up police officers Desmond and Meehan. We entered the room. First we entered the door leading from the sidewalk into the hall; we walked up that hall, entered another door into another hall, and then from that hall we entered another door into a small hall that was used by the people in room 1 and room 2. After we entered that small hall, police officer Desmond knocked at the door of room 2, somebody responded in there, but we could not understand. The man from room 1 came out in the hall and he interpreted for Mr. Desmond that some lady was in there taking a bath. That man is in the room now. We gave them plenty of time to open the door. Then Mr. Desmond was about to force the lock. We could smell opium. When he was just about to force the lock, the elder lady, who gives the name of Ng Choy

(Testimony of E. E. Enlow.)

Fung, the one on the left here, opened the door; she was greatly excited. The small lady giving the name of Lo Kuen, was in bed. There were some boards on two horses, on the west side of the room, and a mat over that, a big straw mat of some kind, and comforters for a bed. On the south side of the room was another bunk of that nature, boards [10] placed upon horses, and bedding. On the east side of the room there were two windows facing the street. On the north side of the room there was a small commode, a little gas range and a stationary wash bowl. We found opium in the room. We had been there but a very short time until police officer Desmond reached over behind the bunk where Lo Kuen was in bed, turned the curtains back, and there was a great stack of opium back there. That was in that recess against the door.

Q. Was there any other opium in the room, that you know of? A. Yes, sir.

Mr. COOK.—We object to any opium, except such as is described in the indictment itself, in a five-tael can. I understand the defendants are only charged and can only be convicted, if at all, in relation to some quantity of that kind of packed opium—not loose jars; there are no loose jars described in the Indictment.

The COURT.—I have not heard anything except about tael cans.

Mr. THOMAS.—I asked him if he found any other opium.

Q. Go on with your story, Mr. Enlow.

(Testimony of E. E. Enlow.)

A. In the commode Police Officer Meehan found quite a lot. There were some shelves under the little gas range where Inspector Toland found quite a lot. This trunk was under one of the bunks; I pulled it out into the middle of the room, and later on Inspector Toland opened it up; there was a great deal of paper in the bottom, all saturated with opium.

Mr. COOK.—Q. Do you know which bunk that was under?

A. I believe I pulled that out from under the bunk in which Lo Kuen was in bed. Then there were two small jars of opium which were found in the north end of the room— [11]

Mr. COOK.—We object to anything about any jars of opium.

The COURT.—The objection is overruled.

Mr. COOK.—Exception.

A. There was a hop toy. A hop toy is a small horn box. They put a small quantity of opium in and push a cap down. It is convenient to carry around in the pocket. There was not much in that. I think you will see it later on. It must be here some place in our exhibits. There was a portion of a smoking outfit in the north end of the room; I am not sure whether it was setting on a gas range, but it was in about that part; the lamp was there.

Q. Did you make a further search of that place after this first night that you were in there, and did you find any other? A. Yes, sir.

Q. Where was that?

(Testimony of E. E. Enlow.)

A. Inspector Toland and I went back early the next morning to make a thorough inspection of that room. We removed those bunks, and we lifted the linoleum. Before doing that, in the bunk on the south side of the room, in the comforters—

Mr. COOK.—We object to anything they found the next day, a foundation not having been laid that the room was left or guarded so that anything could have been put in after the defendants were arrested the first day.

Mr. THOMAS.—The appearance of the room might have something to do with that.

Mr. COOK.—I object on the ground that no foundation is laid to show what happened after they had taken the defendants from that room, *non constat* that somebody else might have put something in that room after they left.

The COURT.—The objection is overruled. [12]

Mr. COOK.—Exception.

A. We had the keys to the room ourselves over night. We left the room locked. Mr. Toland and I went back next morning. In the bunk on the south side of the room, in the comforters, I shook them out carefully and I found one can of opium there that we had missed the night before. It had just been patched. In the north end of the room some place. Inspector Toland found one small jar of opium that we had missed the night before. Then we removed the horses, the linoleum, and in the southeast corner of the room we found a small panel through the floor, and beneath the floor we

(Testimony of E. E. Enlow.)

found 115 more cans of opium wrapped up in five-can packages. When we went into the room, the elderly lady, Ng Choy Fung, was fully dressed; she grabbed me by the hands and held me there for some little time; she was greatly excited, very nervous. When Officer Desmond had Lo Kuen get out of bed, she was fully dressed; she had shoes on, clothes on, and everything. I have spoken of these cans having the appearance, some of them, of having been washed and patched. There was something else there in the room that indicated that to me, there was at the time I went in the room the first night, a bucket of black water, with little parts of opium labels that had been washed off, and there was opium in the water. That bucket was standing on the floor in the northeast corner of the room.

Q. Mr. Enlow, I show you this quantity of opium in the suit case; will you come down here and see if you can identify these?

A. You must remember that this is all packed different from the way it is now. It was not packed up this way at all. We got these to put them in. [13]

That trunk was in the room, that is the trunk I referred to as being inside the room. We seized the opium that we found there in that room at that time. We kept it in our possession until the next day. About this trunk, we asked them to leave all of that stuff in there. I have not seen where the opium ran out here; I would like to have Mr. Toland look at this. Yes, there is it (pointing).

(Testimony of E. E. Enlow.)

Mr. THOMAS.—I offer in evidence this suitcase and its contents, that is, the opium in the suitcase. The suitcase is marked “Ng Choy Fung and Lo Kuen, Room 2;” also the trunk, with the same marking on it; and a telescope basket; a box containing cans of opium; a canvas-covered suitcase, with the same marking, all containing cans of opium, and ask that they all be marked as “United States Exhibit 1.”

(The articles were here marked “United States Exhibit 1.”)

From my observation and experience in opium and opium seizure, I know whether or not this is opium. I state that it is opium, the entire quantity. It is known as smoking opium. That small glass jar looks like the one that was taken out of the room that night. After the seizure was made on the night of August 12th, we placed these defendants in the city prison over night, and the next morning we took them down to special agent Tidwell's office. There was no search made of their person that I know of, not in my presence. I believe Inspector Toland can tell about that. There were very few, not many, cooking utensils there in the room that I noticed. There were no women's clothes hanging on the wall at all; there was one pair of pants and one vest hanging on the wall. Well, I would not say positively that we did not find a little something in the way of women's clothes in some [14] of these boxes under the bed; there might have been a very small amount, but there was none to speak of. As to how far the cans which were stacked up be-

(Testimony of E. E. Enlow.)

hind against the door were from the bed where Lo Kuen was lying, the shelf back of the bed was fitted in the doorway, and I should think that one shelf was about eight inches wide, the lower shelf next to the bed. Of course, a person lying in the bed would put their hand right on the opium very easily: The bed itself,—the bunk—came right up next to the shelf. I had very little conversation with either of these defendants that night. The next day we had a conversation with them. That was in Mr. Tidwell's office, but the conversation was carried on through an interpreter, Dr. Gardner. I only know what the defendants said as interpreted through Dr. Gardner, by questions put to them by Mr. Tidwell. Miss Cameron was not there. I think we asked the defendants on the night of August 12th, what their names were, but I don't know what they said; I know that they were jailed under different names that night, Jane Doe and such as that. We didn't get their right names that night.

Cross-examination.

On cross-examination the witness testified as follows:

I had been in the premises 1137 Stockton Street before that night. I am not very familiar with the place. I just searched one room in there once before. It was not the room of either one of these defendants. I believe it was room 12. That was two years ago. It had not connection with this case whatever. I had not been there recently at all. The upper floors of that building at 1137 Stockton

(Testimony of E. E. Enlow.)

street are a rooming or an apartment house, rented out to Chinese, and the lower story is for a noodle factory, I believe. [15] There is a noodle factory down below on the street. The first door I went through was the street door. That was a closed door that was open to anyone, without being particular in any way, to go into that building, that is it was that time; I don't know whether they locked it up, or not. I had no difficulty in opening that door; anybody could have gone in there. I don't remember whether there was any light in the hallway, or not. Having entered the street door, I went up-stairs, straight up to the first floor, as they got near the first floor, they turned to the left and made a sort of an ell, right to the left of another door there. And then I came into a hallway that runs the entire length of the building east and west, with the exception of the front part of the room, which don't run clear to the street; from the head of the stairs it does. There was a door at the head of the stairs when I got up to that first hallway. It was unlocked. I had no difficulty in going through there. The first two doors I went through were doors that anybody could have come up from the street and gone through, just at that time, as I did. Down that long hallway running east and west are different rooms, living rooms. Toilets are back there. And wash rooms, I believe. Room 12 was on the same floor that room 2 was. I had never seen this defendant, Ng Choy Fung, before the night that I arrested her that I remember. Reaching the top of the stairs from the street into the first hallway, I

(Testimony of E. E. Enlow.)

then turned to my left, facing toward Stockton street. To go toward rooms 1 and 2, I faced Stockton street. As I reached there, there was a doorway to a small room. I don't remember about that door being locked, but I know that we had no trouble whatever at that door. Going through that doorway, we came into a little hallway, and on the left of [16] that hallway is the door to room 1, and almost on the right, or diagonally across from that is the doorway to room 2. I don't think we knocked at room 1 first; we did that after we could not get in room 2. We heard some Chinese talk inside that we could not understand. When we knocked at room 1, a Chinaman opened the door. I don't remember if I took his name at that time. He was a witness on behalf of the defendant at the preliminary examination. His name was Lee Kum. Mr. Thomas and I did not go up to see him yesterday after this jury had been empaneled. We went up and inspected the room, and we talked to this Chinese, Lee Kum. We knew that he was a witness for the defense. We did not threaten him yesterday. We saw him there that night when he interpreted for us. He said the woman was taking a bath; that the woman said she was taking a bath, and to wait a few minutes, and we did. I mean to say, that is what he said, that the woman had answered through the door. I didn't hear anything about opening the door. The substance of it was that she was taking a bath. We waited a certain length of time and then asked again. We might

(Testimony of E. E. Enlow.)

have asked this man who lived in that room when we knocked at room 1; we asked him to tell in particular who we were, that we were officers and we wanted to go in that room. The instant we opened the door we did not see any opium in sight. Well, before we got the cans we had to pull curtains back and coverings. Hanging around the bunk where Lo Kuen was, there was some sort of cloth, a curtain, or a portiere, or something wound down in front of the shelves. I have seen curtain beds or bunks. There was a curtain like that a portion of the way around, at least. I guess that it is a fact that I could not see any of those tins of opium behind that bunk where Lo Kuen was until I leaned [17] over and examined them and searched for them. I didn't try it from all angles, but I suppose that is a fact. I think there were no indications of any tins of opium in sight. I think that is true. Speaking of the cans, you and I might have been visitors there and been perfectly innocent that there was any opium concealed there from what we could see. I don't remember seeing any tins of opium out in open sight. I believe there was a shelf over the bunk, on the south side of the room, which bunk was the one that was unoccupied when we entered the room, and apparently was the one used by the defendant Ng Choy Fung. I don't remember whether that shelf had a curtain or not, you have got me in regard to that, but I remember a shelf being in there. All of those tins—that we found—were not wrapped up in paper like that, they all had not been cleaned yet. The tins that we found behind

(Testimony of E. E. Enlow.)

the bunk, where we found Lo Kuen, were wrapped up in newspaper like this. All of them. I don't remember of any cans being found on the south side of the room, on the shelf. There was a bunk on the west side of the room that Lo Kuen was on. And that was up against a doorway, against a jamb of the door. And there was a space from the outside portion of the woodwork of that doorway into the door itself, maybe of about 8 inches. The ordinary in-set of a door. Where these cans were packed, a shelf had been put in down below the top of that bed in that in-set in the door. There was one shelf there. It was almost up to the top of the bunk. The bunk was up against the framework of the door and a portion of these tins were all wrapped up in paper as the packages are here on that little shelf on the in-set of that door. There was a shelf about that bed, above the door. I don't know whether any of the in-set extended below the door, but here [18] was one shelf up here and down there about a foot there was another one. There was opium stacked in between these two shelves up there. That was all wrapped up in paper, just similar to this. As I look at all these tins of opium, as you hold that one now, I could not say what was in there, I could not tell. That was the condition of all the tins we found on the shelves back of Lo Kuen's bunk; that is my recollection. I am not quite clear about how the opium in the trunk was found. Inspector Toland, I believe, can tell more about that trunk. The trunk was closed. It was hidden underneath the bunk where Lo Kuen was. Nobody could tell what

(Testimony of E. E. Enlow.)

was in there until they brought it out and opened it. The 115 cans we found under the floor the next day were wrapped up in paper. I do not know how many of these tins were in the bunk behind where Lo Kuen was found, in the in-set of the door, we did not keep count of them. I would say in the neighborhood of 200 of them. I mean on the two shelves; on all of the shelves. Well, I may be color blind, but the curtain or piece of cloth you now show me looks like the cloth or curtains that those shelves were all covered with, so that these boxes were hidden behind them. As to where we found any of the opium that was not wrapped up in newspaper wrapping—any of the five-tael tins of opium—I cannot just say what part of the room, but some place toward the north end of the room; it was not the south end of the room, for I was in the south end of the room with that big box, I believe, and some other things, stacking the opium while Mr. Desmond was handing it out from behind the bed, and the other officers were finding it in the north end of the room, some place there. But when I went in the room, I didn't see any five-tael can of opium like that exposed to view. I cannot testify positively as to [19] some Chinese herbs being in a kettle or saucepan on top of that stove. I believe I heard them speaking about something of the kind being there. I saw some cooking utensils and a small amount of edibles, some food. We did not keep that bucket or any of its contents. We had all the evidence we needed. Plenty of officers will testify to the labels I saw in there. That is the

(Testimony of E. E. Enlow.)

only reason I can think of why we didn't keep those labels. I did not take any part of the contents out of that bucket. It is not a mere guess when I say they looked like labels. I knew they were labels, simply by looking at them. Taking this box, I saw some portion of the paper label, that would wash off when they were washing them up, in that tin can or bucket. Some portion of that red,—not a whole label, I don't mean that. I don't know if that has a London stamp on it. I think there was very little of it that had a London stamp on. That has not. We only detected that London stamp on a very small amount of them. I did not see any new labels in that room. Taking these two boxes out of one of the bundles wrapped up, that represents the general condition of the contents, and the appearance of the five-tael cans. Of course, where some had leaked, they would have to wash them more. I looked at several of them. In general, that is the aspect and appearance of these five-tael—660 five-tael tins, with the exception that on some of them the labels have washed off more, and some of them have leaked; they are actually patched; if we look through them we will find some patches there where they leaked. I went with these defendants after their arrest to the city prison, to the lower part; Inspector Toland went up into the building with them; I stayed with the opium. I don't know that they had no opportunity to or that they did not communicate with [20] any attorney or any other person in relation to their arrest prior to the time that Mr. Tidwell took their statements;

(Testimony of E. E. Enlow.)

we didn't want them to, at any rate. I don't know that there were instructions that they should not. It is the usual instruction, there, that a Federal prisoner cannot do that. So far as I know they were interviewed by Mr. Tidwell prior to the employment of any attorney to defend them. I cannot quote anything that the elderly woman said, but I gathered from it that she was trying to make out that she was sick; she wanted to leave the room. She did not attempt to offer any resistance, or did not try to attempt to conceal anything in my presence. Neither of them did. I think Ng Choy Fung had the keys to that room when we left that night after the arrest. The keys, as I understand it, were taken from her down at the prison; but I swung the door shut, and it snapped itself; I know that positively, because I had left my cravenette in the room, and I could not get into the room. Then I thought, "Well, it will be safe there until morning." Then later on Mr. Toland got the keys, and when we went back the second time we had the keys to enter with. I say we found a pair of trousers and a vest hanging in that room; we did not take them. I do not know to whom they belonged. I never made any inquiry. We don't know whether or not the owner of the trousers and the vest went to that room with a key after we had made the arrest. We didn't leave anybody to guard the room. All we did was to come out and shut the door, and the latch snapped on it. I don't know whether anyone had been in that room from the time we made the arrest until the next day. Speaking about this pipe, I believe

(Testimony of E. E. Enlow.)

they found that on the old lady—Mr. Toland did. Mr. Toland can tell you about that; I never saw the pipe. It was found on her person, and the [21] little opium that would be used by such a person; that is what the little horn container I speak of was. But the one we have here, I believe, is not the one that was found on her at the jail. I think that the one we have here was taken from the room. I understand that there was a very small quantity of opium found on her; I never saw it. It was about the quantity that a person who was using opium would have for the purpose of using that pipe. So far as the young woman was concerned, I found no indication of her smoking. I did not ask the younger woman why she was there. We didn't have the story that night, that she had come up there because the old woman got hurt and she came up to nurse her. She wanted to leave. She made us understand that she wanted to go home. We got that story the next day. We took her down to Mr. Tidwell shortly after nine o'clock the next day. I know Miss Cameron of the Presbyterian Mission. I don't remember seeing her down there next morning at all. I do not remember her being there and asking the old woman to say who owned this stuff. I was not in the office all the time that morning, but I don't remember seeing Miss Donalina Cameron there at all. Inspector Toland was with me at ten o'clock that evening when we saw the light in room 2. We were walking along on Stockton street. We had been around Chinatown all evening. I think we had passed once near that

(Testimony of E. E. Enlow.)

locality where we could see the front of that building; had been up there earlier in the evening. I don't remember, I don't think there was a light in the room then. I don't think we looked for a light then. I am not sure that we were along there before that until about nine or ten o'clock that night. It was sometime that night, it may have been after six o'clock, that we got that information, to look for a light [22] in that room; that if there was a light in that room, to look out for some opium steal or transaction going on. We did not know when it would be; we were hardly expecting to find any light there that night. I don't know that we got that information within an hour of ten o'clock—well, I guess it was about an hour. It was during that evening when we got that little tip, but we were investigating another thing in connection with some large cans, empty cans that we found about the street. We received some information sometime, say, between six and ten o'clock that if we saw a light in room 2, at 1137 Stockton street to look out, that there would be some deal going on in relation to opium transactions; our information was something of that nature. There was to be a woman in the transaction. I did not know, from the outside of the building. Looking at the outside of 1137 Stockton Street, which window was the window of room 2. When we got in the small hallway there was a number over the door. Until we got into the small hallway, we did not know which room, Room 1, or which room Room 2 was. After arresting these people, we took this property down to the

(Testimony of E. E. Enlow.)

customs-house, and Inspector Toland and myself stayed by it until the next morning about half-past six o'clock, when special agent Tidwell of the treasury department and customs agent Salter relieved us. We took it down that same night in the police patrol wagon. This opium will be destroyed by the Government after the case is over. When I said we took all this opium down that night, I mean we took down all we found that night, all but 116 cans and one small jar. I don't remember whether or not I saw that bucket there the next day when I went back. We didn't take it with us. [23]

Redirect Examination.

On redirect examination, the witness testified as follows:

When we went back to Room 2 the next morning, things there appeared to us in the same condition as we left them the night before. I found my cravenette there. If I was lying on the bunk where Lo Kuen was lying on the night of August 12th, it would not be necessary for me to lean over and strain and stretch to find that opium that was stored behind the bunk. I could simply lay my hand right on it. The condition of that water in that bucket that was there was black, like molasses, very dark. I know opium was in that water. We could smell opium after we entered that room on the evening of August 12th; and we could also smell it on the outside in the hallway. There was not any door leading directly from Room 1 to Room 2. One door in Room 2 was located in the northwest corner; the

(Testimony of E. E. Enlow.)

other was one in the west side of the room.

Q. Mr. Enlow, you were asked by counsel about a visit that you made to the room on yesterday, to room 2; will you state to the jury and to the Court what was done on that visit to that room yesterday by you or by me?

Mr. COOK.—We object to that as not redirect. My cross-examination was directed to a conversation with a witness for the defense.

Mr. THOMAS.—You asked him if he did not go up there, and if he did not try to threaten this man.

The COURT.—The objection is overruled.

Mr. Thomas wanted to see just the location of this room, and how all those bunks and beds and so on were in relation to the room; we went down up to room 1 and knocked and knocked, and could get no response,—I am wrong about that, it was room 2. We got no response. We then knocked at room 1 [24] and a man came out. We told him what we wanted to do, we wanted to look at that room, and he told us that the old lady didn't live there any more. We asked him to speak in Chinese to whoever was in there and tell him who we were, that we just wanted to look in the room; to get the door open I kept trying, and finally the door opened, and there was somebody in bed there all covered up; we didn't see whether it was a man or a woman; we saw a man's clothing on the outside; we presumed it was just as the Chinese in room 1 had told us, a sick man. There were no threats made by any of us, either Mr. Thomas or me, to Lee Kum,

(Testimony of E. E. Enlow.)

or anybody there in the premises. I testified to that, that there was no threat at all.

Recross-examination.

On recross-examination, the witness testified.

There was some conversation, concerning when Lee Kum first saw this little Chinese woman, Lo Kuen, in that place; I think the remark was three days. We were questioning Lee Kum about whether the old woman was still living there yet. We were questioning a witness for the defense because we had talked to that man at the time of the arrest that night, and we might possibly need him ourselves. We didn't bring him, we didn't need him.

Further Redirect Examination.

On further redirect examination, the witness testified:

There was some talk over the fact that if this man was not coming out for the defense, we were going to subpoena him for the prosecution, that we may use him. What both of us were questioning him about was about the gas bills. I went to the gas company to find out just where they collected the gas bill for these rooms, room 2; the collector said that [25] he collected it from room 2 the most of the time, and part of the time he would go to Room 1 and collect from a lady there. That is what we wanted to talk about there. We knew for a long time in whose name the gas bill was. It was in the name of See Ping.

Testimony of John Toland, for the Government.

JOHN TOLAND, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My business is inspector of customs. I have been inspector of customs about fifteen years. I was at room 2 at 1137 Stockton Street on August 12, 1915. We saw this light, and we went there. First, before going up, we realized that it was night-time, and we wanted some assistance, in order to get into the room, in case they refused to let us in, whoever might be in there. We went down to Grant Avenue and got police officers Desmond and Meehan to come up. The police officers entered the door first, Mr. Enlow followed, and I was in the rear. We went up the stairs, turned to the left, through the first door at the top of the stairs, and again to the left, coming to the front of the building, and opened that door, and knocked on the door at room 2, and there was someone answered from inside, *there was someone answered from inside*, there was some little delay about getting the door open, and I left and went down the stairs again and went out on the street and remained there until I was satisfied that the rest of the officers were in the room; I did that for the purpose of preventing anything being thrown out of those windows onto the street during the time they were getting in there. After I was sure that they were in the room, I went back upstairs and went in the room. They had found considerable of this opium [26] around in various

(Testimony of John Toland.)

places in the room when I got there, it was piled up on the floor, and they were taking it off the shelves. I began to search on the north side of the room, that was where the gas burner and the small commode were; underneath the gas burner was a boxed-in affair, with shelves in it; I opened that, and it was full of those packages; I pulled those out; I think it was Mr. Meehan who was taking it out of the commode that was alongside the gas stock, all packages like that, until we had gathered up 541 cans, or something like that, and packed it in boxes and trunks and sent for the patrol wagon and had them taken down to the custom-house. I saw these two defendants there that night; they were in the room when I got back up in there. I saw a bucket in the room. It was an ordinary water-bucket; it sat in the northeast corner of the room, just near where the wash-bowl was. It was out a little on the floor. It was nearly full of dirty water, water that contained opium. I could tell that from the smell. It was also full of scraps of those labels similar to the labels on the can. I got in the room again the next day, early in the morning; I should say it was nearly seven o'clock, or half-past six, or somewhere around there. I left the room locked the night before.

Q. What did you find there the next morning?

Mr. COOK.—We object to that as immaterial, irrelevant and incompetent, and the foundation is not laid to show that the room was not entered by somebody else in the meantime.

(Testimony of John Toland.)

The COURT.—The objection is overruled.

Mr. COOK.—Exception.

We found the room in the same condition, as near as I can recollect, as the way we left it the night before. It was considerably tumbled up. Mr. Enlow first found another can [27] of opium on the bunk, or in some part of the bunk, wrapped up, on the south side of the room. I began to search again on the north side, around where the commode and the gas stove were, and I found one of those bowls, or that small bowl you had out a few minutes ago. We had missed that the night before. Shortly after that, Mr. Enlow had lifted the linoleum from the floor under the bed on the south side, and he said, "There is a hole here," and he lifted one of the boards. He said, "This must be the rest of it," and began to pull out packages of opium. I went over and helped him, and we pulled out the other 116 cans. The defendants were put in a patrol wagon that night and taken down to the Hall of Justice. I went with them. The matron at the city jail searched them; or at least, she reported that she did. I asked that they be searched. The police officer there got the matron to take them in a room there and search them. I didn't see any cans of opium in the trunk. There was a large painted carton that had had opium in it, it was full of opium stains; it was about 14 inches long, I should judge, by about 7 or 8 inches wide, possibly 5 inches high; it had been cut open, it had been sealed; it was a double can, one can inside the

(Testimony of John Toland.)

other, sealed; and it had been cut open and the top turned back. There were opium stains in that. That was in the trunk. Also a lot of papers. There were no five-tael cans of opium in the trunk.

Cross-examination.

On cross-examination, the witness testified:

I mean at the time that the trunk was found there were no five-tael cans in it. The trunk was simply utilized by us for the purpose of packing these things in to take them away from that room. I think all the receptacles here were [28] taken from that room. That box was pulled out from under the bunk on the west side and whatever stuff was in it—I forgot just what the nature of the goods was that was in it—was taken out and we picked those things up in the room. I cannot fix the location of where I found the first suitcase. None of this stuff that is here in court now packed in any one of the receptacles that they are in now, was in any one of such receptacles at the time I went into that room. None that I saw. I didn't see all of the suitcases in the room individually. I don't think I examined any suitcase whatever. The trunk has stain. The carton is not here; it is a tin box; it looks like a five-gallon ordinary coal oil can cut in half lengthwise. As to the receptacles that are here in court, I didn't see any signs of opium leaking or stains, except in the trunk itself; that is the only one I noticed. I am pretty sure that that box was pulled from the bunk on the west side of

(Testimony of John Toland.)

the room; and I think we used that to pack the opium in. I didn't go up into the room where this arrest was made until a few minutes after the arrest was made. I don't know where Lo Kuen was, or where the other defendant was, relatively, at the time the other men went in there. I was not there. When I went into the room, the two defendants were standing right in the middle of the room. I noticed curtains around some of the shelves. I think Officer Desmond was just about getting this stuff out from back of the bunk on the west side when I got in there. I did not see what they removed to uncover and disclose it before they took it out. As far as anything that I found myself, that was concealed from view at the time. In other words, you and I might have gone into that room as visitors and been there as visitors without seeing anything about the opium, except the smell. I don't know [29] about the curtain on the west side. I don't believe that that shut the opium out entirely; I believe a person could see those packages on the shelf. You could not tell what was inside them. Assuming anyone saw those packages, there was no indication to a person not connected with an opium deal to know that there was any opium concealed there. I said we took 116—or 115 cans. If I used the word "other," I meant to cover what we have here. I am not going to answer yet as to how many I expected to find. I would say it was about seven o'clock that evening that Mr. Enlow and I started on work of inspection—went to Chinatown after

(Testimony of John Toland.)

dinner that evening. We were all over Chinatown. I think we went up Sacramento street, if I recollect right, to Stockton; we walked up from Kearney, up Sacramento to Grant Avenue, and on up to Stockton.

Q. When you went up Sacramento street to Stockton, did you have 1137 Stockton street as an objective point.

Mr. THOMAS.—I object to that as not proper cross-examination.

The COURT.—The objection is sustained.

I could not tell what time we got on the block of Stockton street between Jackson and Pacific that night for the first time. We were up and down Stockton street and Grant Avenue and Powell Street. I didn't pay any attention to the time. I don't recollect just what time in the night we began to look for lights. I think the arrest was made a little later than ten o'clock. I don't think we were on Stockton street between Jackson and Pacific between six and seven o'clock. We might have been between seven and eight o'clock. I did not see this little woman on the street that evening. I didn't see her. I know her very well. I would have noticed her if I had seen her. To my recollection I had not seen [30] the defendant Ng Choy Fung before. I did not see the vest and trousers in the room. I think to-day is the first I heard of them. I have not paid any attention to them before, I had not heard of it. I assisted in the search. I was searching for opium. I was not searching to find out whether there were any chinese women's clothes. There was not very

(Testimony of John Toland.)

much there; there was not much wearing apparel of any kind in the room. There were some vessels on top of that stove. I don't know whether you would call them saucepans or not; they were round vessels with handles on them. There was some kind of chow in them, I don't know what it was. I remember testifying before the Commissioner that there was something on top of the stove, and it looked as if they had been cooking something. That is the fact, but I don't know what the substance was. We didn't think it was necessary to keep that bucket and the contents. It would have been quite a job to load a bucketful of that slop into the patrol wagon and haul it down to the station. We didn't take any of the contents of that bucket, labels, or anything else. I made an examination of the bucket, it was not a casual glance. I got down and took my lead pencil out of my pocket and took a lot of the scraps of these labels out of the dirty water and took a good look at them and put them back again. I didn't keep them. I went down to the city prison at the time these parties were arrested. I was there next morning when they were interviewed by Mr. Tidwell. I could not testify to who was the last to come out of the room after the arrest, because when the first lot of opium was taken down, I went down with it, and it was put in the patrol wagon, and I stayed there on the street. One of these officers, after the arrest was made, or after I made this collection of stuff [31] I was seizing, 'phoned for the patrol wagon. And I

(Testimony of John Toland.)

packed up the stuff in these different containers to cart away and guard over night at the custom-house, or some place of safe-keeping. We took the prisoners with us at that time. I was not the last one to leave the room. I went down with the opium; I forget whether it was the trunk or one of the boxes, but I went down with that, and when it was put in the patrol wagon, I stayed there. Some other policemen came up with the wagon and they assisted in carrying this down; who was the last to leave the room I do not know. Mr. Enlow went with me the next morning to the room on Stockton street. He was the only one; no officers. He and I were the only ones who made the search. The matron gave me some keys which she said she had taken from the elderly lady at the city jail that night. I have the keys in my pocket; there were several keys. They were on a ring. I have only the matron's statement as to who the keys were taken from. She said she took them from the elderly lady. There is a key that opens the door that leads to the sidewalk; also a key for the door at the head of the stairs, a key for the door going through the hall, and a key to room 2. There are more than four keys. I had to use the key for going in the little hallway to rooms 1 and 2 when I went back the next morning. I only used the key in the door; the door at the head of the stairs was open and the door from the street or the sidewalk into the hallway was open.

I took these two defendants down to Mr. Tidwell's

(Testimony of John Toland.)

office the next morning after the arrest. I don't recollect now who was with me. I think there was another officer sent up for the surveyor's department. I think it was Mr. Tidwell. I don't think Mr. Enlow went up the next morning. I should [32] judge I took them down about half-past nine or a quarter to ten. Mr. Enlow and I had been up to the rooms at 1137 Stockton street earlier in the morning, and taken charge of this other stuff I have spoken about, and taken it down to Mr. Tidwell's office. And then I went up to the city prison; and I took my two prisoners down to Mr. Tidwell's office for an interview. No police officers went with me at that time. There were no other police officers involved in this transaction with me, acting with me, other than Mr. Desmond and Mr. Meehan. Their connection with the matter commenced after I saw the light, and it ended after the arrest. When I went down to Mr. Tidwell's office with these two defendants, there was there besides myself, Mr. Tidwell and the two defendants, the rest of the office force in the different departments; there are three rooms there. Right in the room itself where the interview took place there was just Mr. Tidwell at the time we took them down first. I was present at the time they were interrogated by Mr. Tidwell and Dr. Gardner was there acting as interpreter. I think we took the two defendants into the business office first, and then took them into the office farthest south, and one by one—I think we took one in at a time in Mr. Tidwell's office; then later both were

(Testimony of John Toland.)

in there together. I was present at the time either or both of them were being interrogated at all times, and Mr. Enlow was there. I do not think there was anyone else. I know Miss Cameron. It is my recollection that she came there in the morning before we went up to the prison for them; it appears to me she came into the office after we took the 115 cans to Mr. Tidwell's office. There was some little time elapsed, maybe 15 or 20 minutes, before we went up to the prison after the defendants, [33] and it appears to me that Miss Cameron was around there at that time. She did not interview them at the request of any of the custom officers. She was not talking with them. She was not there in connection with the case as far as I know. Permit me to correct myself on that; it was at the prison that I saw Miss Cameron, not at Mr. Tidwell's office. When I left Mr. Tidwell's office, between 9:30 and 10, to go to the prison for the women, when I went up to the booking desk Miss Cameron came in while I was waiting there and asked me about these women, and I told her about their arrest, but that is all. I did not see Miss Cameron talking with them there in the prison. Miss Cameron did not say anything to them before they ever made any statement to Mr. Tidwell that I know of. On the evening of the arrest, I was on Stockton street between Pacific and Jackson so I could observe whether there were any lights in room 2 between six and seven o'clock that evening. We might have

(Testimony of John Toland.)

been there between seven and eight. I don't think there were any lights in the room at that time. I looked for lights at that time. I was looking for lights between seven and eight o'clock, and I left and went to some other part of Chinatown altogether. It must have been near nine o'clock—after eight o'clock, half past eight, before I returned to the immediate locality. I do not think I saw any lights then. I didn't see lights burning there all the evening in that room. When I reached the room, there were shades or curtains on the windows. They were down. I don't recollect that there was more than one gas jet in the room; I don't know. It was a fairly well-lighted room when I came inside it. I saw a light in room 1. I don't recollect whether or not I saw any light in room 1 by seven o'clock that night. As [34] a matter of fact, what I am positive about is that about ten o'clock, a little before ten, I did see a light in room 2. We went for the police at somewhere around half-past nine; we first wanted to find the sergeant, but we could not find him, we went back up there again and the lights were still burning; it must have been near ten o'clock; then we went down and got these two officers without seeing the sergeant. I did not see anybody going in or out of the building during any of the times I was there that evening. Well, we were observing pretty nearly everything around that immediate neighborhood about that time. I did not see any Chinaman come out of there that evening with a dark mustache.

**Testimony of George W. Desmond, for the
Government.**

GEORGE W. DESMOND, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I reside in San Francisco. My business is police officer of the city and county of San Francisco. I have been a police officer for seven years. I was a police officer on August 12, 1915. On that day I visited the premises at 1137 Stockton street in this city.

Q. Will you state to the jury and to the Court, Mr. Desmond, what you did there?

A. About ten or a little after ten on that evening I was approached by inspectors Enlow and Toland, and they asked us if we would go to these rooms, they thought there was opium there. We went up there. As soon as I got in the second hallway, I detected the fumes of opium very strong; I traced it to room 2. So I knocked on the door and demanded admission. A female voice, a Chinese, called out something in Chinese. I told her to open the door, that we were the police squad. She called out again, and a Chinaman in room 1, I called him out to interpret, he said that the woman inside was [35] taking a bath. So I got up on the *knock* of the door and looked over the transom—because I knew she was not bathing, because she was standing right inside the door—

Mr. COOK.—I move that that be stricken out as the conclusion of the witness.

(Testimony of George W. Desmond.)

The COURT.—Motion denied.

And I seen her standing in the center of the room, facing the door we were trying to enter. I got down and started to force the door, and she came and opened it. We went in. She got hold of Inspector Enlow. I walked past her and looked around the room, and I seen the smaller woman in the bed, or in the couch there. I seen she was fully dressed. She got up on the floor. I was looking around there, and I noticed these packages in back of the curtain, and I jumped up on the bunk and pulled one out and tore the paper off it, and I saw that it was opium. I started to throw it all down on the bed. I passed it to Inspector Enlow. After we got all the opium we could find, we took the women and the opium and brought the women to the city prison and the opium was sent to the customs-house. I pulled the opium down from right by this bunk or couch used by the Chinese; it is not a bed, it is four or five boards on two carpenter's horses, and some quilts or blankets; right behind this, on the wall, I think there were three shelves, and the opium was piled up on those shelves. Lo Kuen would be lying this way, and this would be the pile in back. I found some other opium over the other bunk; that was on the south side of the room. Personally I found only that opium that I speak of behind the two bunks. I noticed a bottle or a jar of some opium on a stand there. The older woman was fully dressed when I went into the room; [36] just as she is now; she had just as much clothes on her.

(Testimony of George W. Desmond.)

The small woman was fully dressed. I saw a bucket on the floor there; it was nearly full of black liquid, which smelled very much the odor of opium, and also parts of paper. It was small pieces of green paper, some of it was green and some of it was red.

Cross-examination.

On cross-examination the witness testified as follows:

I cannot describe the color of the dress the old lady had on that night. I didn't mean that she was dressed in the particular costume she is in now; I meant she had on as much outside clothing as she has now. I know she had a hairdress on similar to the one she has on now. She was not barefooted. I did not notice what kind of shoes she had on. Maybe it was five minutes from the time I first knocked on room 2 before I finally went into room 2. I don't know in what condition their feet would be as to whether it was long enough for a person to be bathing their feet and put their stockings on. There was a bucket of some substance; there was water in it, and there was also opium in it. I did not taste it, but I smelled it. I don't know of anything besides opium that will make the smell of opium. I stirred the contents of that, with a stick I found there, that night, to see what was on the bottom of it. I don't know what Officer Toland did. I did not see him doing that. I did not see anybody but myself go to that bucket. So far as I noticed nobody went to that bucket excepting myself. Anybody else in the party assisting in that arrest could have examined that

(Testimony of George W. Desmond.)

bucket and I would not have seen them, because I was busy taking this opium down. There was a piece of red cloth over there, just hung down over the shelves behind this [37] bunk where the little woman was, that I found this stuff behind. There was some shelf there, because I caught, I think, three cans of opium off those shelves, so they certainly were there. There were two doors to that room, the door that I entered, and as I looked toward the right of the room, I could have seen the little bunk that the little woman, Lo Kuen, was on; and there were some curtains hanging down at the foot of that bunk. As I stood in the door I entered, I could not see the second door from that bunk until I walked up in front of the bunk. That second door was a door that connected with an adjoining room, apparently. And that door was set back some inches, I don't know how far. I really don't remember that it set back far enough so that a board had been placed down below the top of that bunk, and on that board was setting some of these packages. I don't remember that. I see these two marble pillars, and I see the set-in in back. Assuming that these marble pillars and that piece along the top represented the woodwork that was around that door as it was back of the bunk, that door would represent just about where that smooth marble is,—the door itself. And this bed was up about the way this table was, against the edge of that door; that is right. I don't remember that in back and down below, about eight or ten inches, was a board that had been placed between the two side

(Testimony of George W. Desmond.)

posts. It was possible to lie on that bed and reach up and touch anything you found. You would have to reach up. I do not know, I cannot testify that you could lie on that bed and put your hand over and feel, even with the bed, any of those packages. I don't know whether there was a board there or not. I know the shelves were just in back of the bed there, [38] but the exact location so far as inches go, I could not testify to. I don't think it is a fact that the shelves I found most of the opium on would be on the top of what those marble pillars would represent, if they represented the sides of the door; I don't think it was up that high. A curtain was over a shelf there, about three or four feet up, I guess it was. That shelf was in front of the door, the shelf where I found the opium. I don't recollect of a shelf being underneath the bunk. I don't think I found anything under either bunk. The first I saw of this trunk was after I started to handle the opium over to Mr. Enlow, the trunk was in the center of the floor. If it was there when I came in, I didn't notice it. We got these suitcases or boxes from under the bunks when we were going to take the stuff out, when we got the opium all on the floor ready to take it out. I found no opium under any of the bunks. I was the only one who searched behind the bunk where Lo Kuen was. That night I handled everything that came from the back of the bunk where Lo Kuen was. I examined the bunk that Lo Kuen was on. I did not find anything, opium or pipe, in that bunk. I found no indication of Lo Kuen using any opium or

(Testimony of George W. Desmond.)

smoking any there in that bunk. I didn't find any opium or pipe on her, but I believe there was a pipe found on one of the women when they were searched later on. I was the only one of the searching party who took charge of that side of the room where the bunk was that Lo Kuen was found on. I made what I thought was a thorough search. I don't remember how many gas lights were there burning when I went in the room; I don't remember where the gas was located in the room. I don't remember whether it was a side jet or a pendant jet from the center. The room was pretty well lighted. I was standing on the corner of Washington and [39] Grant Avenue at the time that Mr. Enlow and Mr. Toland came to ask me to go up there. I don't remember whether I had been up on Stockton street between Jackson and Pacific that evening. We had been all over the district. I had no occasion to observe these premises that evening before I went up there with Enlow, no more than I would any other building. I have no recollection as to lights or what the condition of the building was. Mr. Enlow and Mr. Toland didn't say anything about where we were going, except we were going up on Stockton street some place, until we got directly opposite 1137. They walked over and said, "This is the place." I think I went up first. Mr. Enlow and Officer Meehan followed. I think Mr. Toland was outside; if he came up he didn't stay very long; yes, he did come up—I wish to correct myself, he came up and as soon as we located the room he left and went outside. I had no trouble in opening the out-

(Testimony of George W. Desmond.)

side door, or going into that little passage-way between rooms 1 and 2. After we passed that door going to rooms 1 and 2 we smelled the opium then. In the hallway I detected it slightly. I don't remember the exact width of the hallway that is between rooms 1 and 2. I paid no attention to any of the dimensions, and I have not been in the place since, so I could not tell anything about it. When I arrived there, I knocked on room 2. I said, "This is the police squad"; there was some response in Chinese; then an interval elapsed until I knocked on room 1 and a man came out, a Chinese, who started to act as interpreter. After he carried on some conversation in Chinese with the woman inside, I started to climb up onto the door knob, to look over the transom. About five minutes expired from the time I knocked on the door until that happened. As I looked through the transom, Ng Choy Fung was standing [40] in the room, right inside the door, on the floor, so I could see her. She was not near the stove; she was near the door. I don't know the dimensions of the room. I don't remember where the stove was. I know there was a gas plate in there, but I don't remember the exact location. I believe there was a washstand on the north side. The bucket was over in the northeast corner; the bucket was not very near the gas range, the bucket was to the north and to the east. I don't remember how many chairs there were in the room. From that west wall I took down the biggest part of the whole seizure. I was not able, myself, to know what was in those packages until I

(Testimony of George W. Desmond.)

tore the covers open. I had an idea what it was, but I did not know for sure. As soon as I felt the package, I knew what it was. I tore open the packages and looked to make sure, but I knew they were opium cans. As they stood on the shelves I could not tell what was in them. All of the packages I took were tied up in about the shape and size of a brick. I have not the least idea about how many of those packages I took. I know it was the biggest part of the seizure. I think I filled up a suitcase or two. I am not sure whether I filled up one suitcase or two suitcases. Mr. Enlow packed them in. I know there were a great number of them. I don't know how many. I spoke to the defendants after I got into the room. I didn't have much to say to them. Later on the little one, Lo Kuen, said she wanted to go home, but didn't say where she lived. She said that after we were pretty near ready to go away from there. During this transaction she said she wanted to go home. I don't remember her saying anything about Commercial Street. If I testified before Commissioner Krull, that she said she wanted to go home and I asked her where she lived and she said on Commercial Street, I guess [41] that is right because my mind was more refreshed at that time than it is now. I recollect now anyway that she said she wanted to go home.

**Testimony of John Toland, for the Government.
(Recalled).**

JOHN TOLAND, a witness recalled on behalf of the United States, testified as follows:

Q. (By Mr. THOMAS.) Mr. Toland, do you know about what the price of opium was per can at the time of this seizure?

Mr. COOK.—Objected to as immaterial and incompetent.

The COURT.—The objection is overruled.

Mr. COOK.—Exception.

A. Between fifty and \$60 a can. It was nearer 60 than 50. There was not any water splashed on the floor around that bucket. It is clear in my mind as to the situation of the bunk or bench upon which Lo Kuen was lying, and the shelves behind it. The arrangement was—you came in the door,—the bunk that Le Kuen was lying on, that these other officers said she was on, she was not there when I came in, was to the right of the door as you came in the room. There was a door in that wall, through that wall, leading to the next room; the door was set in as any ordinary door and the bunk was along that. I saw Officer Desmond pulling these packages from behind that bunk, evidently coming from that space. I saw him bringing them right out from the top of the bed, not above, but right out from behind the bed; there was a space there of 6 inches. It was not as deep as the space behind those pillars. It was more like the insert on that smooth marble where the fruits and vegetables are shown. I think those are 4-inch walls,

(Testimony of John Toland.)

and it would be about 5 or 6 inches possibly. It was not what you would call a deep recess in [42] there. It was just a slight recess. That door was closed; I think it was locked. We didn't look in the other room; it might have been barred from the other side. There were other shelves. I should judge the one lower down was about 3 feet and the other one was about 14 inches. All of that opium was not on the shelf 3 feet above; some of it was in back of the bed. All of the cans of opium I saw there on the first night of that seizure were in about the same condition; they were not at all clean; there were some of them that had opium on the outside; some had patches on like that one you see setting on top there, looking like sticking plaster; a lot of them had that on the different places around the cans where they evidently had been leaking. Some of them looked like they had been cleaned up and others looked as though they had not been. There was not any opium inside the trunk; there was an empty carton inside the trunk and a lot of papers. I don't recollect the exact spot where the opium cans which had not been patched and cleaned were. I know there were some such in the seizure. In that room, which was small, 10 or 12 by 14, there were two policemen, Mr. Enlow and myself and the two women and the two beds turned upside down and so there was not much space—you couldn't see everything. It was a small room. I don't recollect the exact spot where the cleaned cans were found.

(Testimony of John Toland.)

Cross-examination.

On cross-examination, the witness testified :

The shelving that was behind the bunk that Lo Kuen was found on was put up on the ordinary brackets that the Chinese use, screwed to the wall; they were not affixed to the door, nor to the side of the door. The shelves were longer than the door was wide, and the shelving was fastened [43] to the wall, not to the jamb of the door, according to my recollection. They came out from the wall and beyond the inset of the door. They had a red curtain over them. They were covered up by a red curtain, just as Mr. Desmond has spoken of, the curtain was hanging from the top shelf. That curtain did not extend down to the top of the bunk. Mr. Desmond was leaning over the bunk and falling down behind and pulling these things out. I did not see how far he had to put his hand down. Presuming this to be the top of the bed he was with his knees right on the bed reaching right over; the first I would see of the package would be when he brought it up over the edge of the bed. It came from somewhere here, but how far down I don't know. I would say these packages are in the exact condition they were in at the time the seizure was made; some of them we opened and some we did not. I cannot now tell whether that package had clean cans or tins. I don't know how many I opened of those. We opened maybe a dozen packages. I think they all looked approximately like those tins now shown me, substantially so, according to my recollection.

**Testimony of E. E. Enlow, for the Government
(Recalled).**

E. E. ENLOW, a witness recalled for the United States, testified as follows:

There were no other persons in room 2 at 1137 Stockton Street than the two women defendants when the officers went into the room. It was not possible to use this door, that had the shelf in front of it, as an exit from that room, because before we could get in this room we had gotten in the room to the rear of this, and thought we could get in that way, but it was nailed or locked; we could not do it. [44]

Cross-examination.

On cross-examination, the witness testified:

I have just testified right now that that door was either nailed or locked. While we were waiting we went around the large hall and came around to this room and tried to get in that way. I don't know the number of that room. I think Mr. Desmond opened that door from the hallway and we went in. There was not a light in there. I don't know the number of the room. I believe Mr. Desmond unlocked the door with one of his pass-keys. I think Mr. Mehan was with us, perhaps Mr. Toland, I don't know. I don't remember whether that was just a minute before or a minute after we had called the Chinaman to interpret for us. I don't remember. I do not remember whether there was a knob on the door between the two rooms, room 2 and the room that that other door led to. I say it was either locked or nailed because it was fast. It may be a fact that I

(Testimony of E. E. Enlow.)

did not make any close observation, simply found that I could not open it with the doorknob; I know that we made some effort to get through there; we didn't want to do any damage but we came back and tried it. From the other room I saw the lock and bolt there, from room 2. Yesterday I saw a lock and bolt on the inside of that door in room 2 that was behind the bunk. At the time of the arrest I don't remember what it was, but I remember that it was fastened. I don't remember whether or not we tried Desmond's pass-key on that door; we may have done that; we made some effort to open that door and could not. I remember that there was a bunk against that door and the doorway there was stacked practically full of opium. [45]

Testimony of Lo Kuen, for Defendant.

LO KUEN, one of the defendant, being first duly sworn, testified as follows:

I don't remember if I have heard Mr. Jones, this interpreter translate from Chinese into English before. I know some of this interpreter's Chinese. I first met Ng Choy Fung three days before I was arrested, on Jackson Street. I intended to go to the Movies. I had come along and saw a woman on the street and I walked a little faster, she had fallen down on the street, and I saw a man helping her. And I asked her what was the matter. She said she had fallen down on the street. She said, "I am very tired and I am not well." She said that her head became dazed and she fell down. Then I asked her, "Now, you are so tired that you fell down,"—I

(Testimony of Lo Kuen.)

asked to go with her. Then she asked me, because she could not walk very well, would I escort her home. I asked her where she lives; she said on Stockton Street. The place she fell down was on Jackson Street, near Stockton. I went with her to Stockton Street. I had never been there before. She said she lived in the Jung Wah building. I went with her to her room. I escorted her there, asked her where she lived, and she said on the second story. She opened the door and I didn't see where the door opened into. Then she asked me, "Won't you please open it for me?" I tried to open it but it would not open. A man from the next room came there to us and he opened the door and asked what was the matter. I see that man in the courtroom now. He is Lee Kum. He opened the hall door. Choy Fung asked me to open the door into her room; she gave me the key and showed me which key would open the door. I had never been up there to that room [46] before that night. I talked with Lee Kum at that time. I had never seen that Chinese before that night when he opened the door for us. After I got in Choy Fung's room, she said, "I thank you very much for having escorted me home." Then she asked me what my surname was. I answered that my name was Lo Kuen; then she told me that she was very much obliged that I had brought her there. She asked me where my place was and thanked me. I made some tea and stayed there until quite late. I went home to my place afterwards. I live on Commercial Street, 687, that is between Kearny and Montgomery

(Testimony of Lo Kuen.)

Streets. I went back to Ng Choy Fung's room again at 9 o'clock the next day, to sweep the floor and to make some tea for her. She had requested me to come back. I stayed until about 11 or 12 o'clock that night. I went home that night again. I went to Ng Choy Fung's up on Stockton Street on the day I was arrested about 9 o'clock. She asked me to go out on the street about 6 or 7 o'clock on the evening of the day I was arrested, to get some medicine, some medicine made in the form of tea. I did. I went to Ah Wah Tong's drug-store on Jackson Street; I don't know the number. Before I went for the medicine that night, I heard somebody about that time knock on Ng Choy Fung's door. I did not see who it was. I heard somebody call out, "Choy Fung, Choy Fung" and knocking on the door at the same time, but I didn't see who it was. She told me to stay awhile and to come back in two or three hours. I got back there to the room that evening about 7 or 8. The kind of medicine I got at the drug-store was the filling of a prescription. When I came back in the room after getting the medicine Ng Choy Fung and I boiled the medicine again, on the stove in the room. [47] I don't remember the time these officers came up that night. I remember being arrested. Before the men came in the room and arrested us, we were washing or bathing. I don't know anything about opium around that room, before I was arrested or on the shelves. I was going to this room of Ng Choy Fung's after the first time I met her because she has asked me to come and make tea for her and cook for

(Testimony of Lo Kuen.)

her, and so on. That was the only reason that took me to that room.

Cross-examination.

On cross-examination, the witness testified :

I have lived at 687 Commercial street over a year. No one lives in the same room with me. My husband was not there. Sometimes I did sewing for a living, sometimes I nursed. The last time I worked before I picked up Ng Choy Fung on the street was two or three months. After I went to room 2 at 1137 Stockton Street, the kind of work I did there for Ng Choy Fung was cooking and boiling the medicine and sweeping the floor and taking care of her. I cooked the first evening I went there. I cooked tea and the medicine. I asked her if I should cook her any rice and she said no she didn't want any. I cooked some food for her the first night I was there. I cooked on the stove. The rice was in an iron concern, on the floor, just at the opening, as you open the door. On that night I swept the floor and attended to her getting more tea and took care of her in that way. There was a broom there. I didn't do any dusting that night. I didn't sleep in her bed at all the first night I went there. I did not take a bath in that room that night. I went home between 11 and 12 that night. I went alone. I did not leave anybody with Ng Choy Fung. She was sick, very sick, not able to get up. The next morning I got there about 9 o'clock. I [48] knocked at the door and she opened the door for me. When I left the room the night before to go home I don't remem-

(Testimony of Lo Kuen.)

ber who locked the door. I had no key other than my own. She gave me a key when I went out at 6 o'clock at that time, on the night of the arrest. I did not have a key before that; when I went back I pounded at the door. I had my own keys, one bunch. They were in my pocket when I was arrested. I did not have a key for room 2 in my bunch at the time I was arrested. When I had it I kept it in my pocket. After we got to the courthouse they took it away from me. At the courthouse they took away from me the key belonging to Choy Fung and the bunch of keys belonging to me. I don't know how many, because I had some that I had no use for on that bunch. I don't know how many I had of keys I had no use for on that bunch. I never got those keys back. She gave me a bunch of three keys, she showed me that one was for the street and one for the hall door and the other for the room. When I was arrested I had not returned those keys, they were on my own person. On the second day that I was there at Ng Choy Fung's place, I just cooked and made tea and swept the floor. I cooked rice and I helped her to wash her face. I don't remember that I did any washing that day. The second day I went home about the same time, about 11 or 12 o'clock. Ng Fung was very sick the second day. She didn't get up. I did not occupy either of the beds on the second day. I went out of the room on the second day, between the time I went there in the morning and the time I went home at night, to get some medicine and to buy the food, excluding the

(Testimony of Lo Kuen.)

rice. I don't remember all the details of what was cooked that day. There was rice cooked. When I went out on that day I pulled [49] the door to. When I came back, I pounded on the door and she opened it. She might have been up at some other time that day for a few minutes; she was about as sick that day as she was before. When I went home that night I pulled the door to. I went back to room 2 where Ng Choy Fung was on the third day, the day I was arrested, about 9 o'clock. That day I did just the same, I helped her to cook and to sweep the floor and to cook the tea. Ng Choy Fung got up that day. I was sick that day; I had a headache. When the officers came in I had been lying down on the bed just a short time while she was washing herself. Just before that I had been boiling water for her to wash with, and also made tea. I saw an opium pipe there in the room. I have seen her taking opium. I didn't see where she got it from. I did not see any opium around there. Two days I saw her smoking. I did not get any opium for her to smoke. I don't know whose trunk that was. Ng Choy Fung took her bath at the wash-bowl, a very small distance from the stove, about a foot.

Testimony of Lee Kum, for Defendant.

LEE KUM, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I live in Room No. 1, at 1137 Stockton Street, San Francisco. I have lived there about two years. My business is white shirt store, ladies' underwear. My place of business is on Stockton Street, between

(Testimony of Lee Kum.)

Broadway and Pacific. It is the next block below from where I live. I am a man of family. My wife and little son and daughter occupy the room where I live. I don't know the defendant, Ng Choy Fung, the old lady, I don't know her name. I don't know whether or not prior to her arrest she was living in room 2 at 1137 Stockton [50] Street. I have seen her there. The first time I ever saw the little woman Lo Kuen there was three days before she was arrested. About 8 o'clock or so I saw her coming home with that other woman that is alongside of her there. She was very much excited and wanted me to open the door, the second door, I do not mean the door from the hallway into the little hall between rooms one and two. I unlocked the door for them. I had never seen that little woman, Lo Kuen up there before that time, when I assisted her to open the door. It was about one year before that night that I had seen the other woman living in that room. I saw Lo Kuen the next morning about 9 or 10, carrying a slop-bucket from room 2 into the back part of the building. I was in my own room on the night that these two women were arrested. I heard the commissioners striking the door. They asked me to come and open the door. The commissioner asked the woman to open the door; she said she was taking a bath; she spoke in Chinese. The commissioner asked me to tell her to open the door and I told her to open the door. She said, "I am taking a bath, in a moment," that is, soon. She opened the door soon after I spoke to her in Chinese. I saw these

(Testimony of Lee Kum.)

four men up there, the commissioners, that night. Before she opened the door, they looked over the transom into my room and asked me to open the door, and for me to come and ask the other room people to open the door. I understand that there is an outside door from the hallway that opens into a little hallway between room 1 and room 2. When the commissioners came up they were in that middle portion, that middle square, the little hallway in front of my room and room 2 before they climbed up to the transom and called for me to come out. [51] They asked me when they came in there and they called upon me over the transom and then I started and they asked me to call on the woman and ask her to open the door, and I called upon her to open the door, and then the woman answered, "I am taking a bath." Then the commissioner said "Hurry, hurry"; then she opened the door; then I did not see what they did. I saw these gentlemen, Mr. Enlow, Mr. Toland, Mr. Desmond and Mr. Mehan up there that night. I saw him (pointing to Mr. Toland) go there to that other room. He went out alone. I have never been into room 2 where these two women were arrested.

Cross-examination.

On cross-examination, the witness testified: The first time I ever saw Ng Choy Fung at room 2 was about one year. I don't know what she was doing there; I have simply seen her going in and out of there. I did not see her every day, only very seldom. Sometimes I would see her in the hallway. Some-

(Testimony of Lee Kum.)

times I didn't see her as often as once a week. I did not talk with her; simply saluted one another. She never went into my room. The last time I saw her before the day that I saw her come up there with her friend was several weeks. The time I saw her with the little woman on Tuesday night was the first time I had seen her for, well, may be about two weeks and some days. I did not pay very much attention to her. I was not interested in what she was doing. I didn't know where she lived the two weeks before I saw her on Tuesday night. Two weeks previous to when she was sick is when I saw her before. I don't know whether she was there or not during those two weeks; that is, from the time I saw her up to the Tuesday [52] night when I saw her with the young woman. I don't know whether or not the young woman was there during those two weeks. When I saw Lo Kuen in the hall she had just an ordinary water bucket of galvanized iron, white iron.

Redirect Examination.

On redirect examination the witness testified, as follows:

The old lady came home about three days before she was arrested, and that is the time that this little woman came home with her when she came home sick.

Testimony of Lee Hong, for Defendant.

LEE HONG, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

I speak English. The first time I ever saw the defendants was on August 10th, 1915. I was walk-

(Testimony of Lee Hong.)

ing up Jackson Street to go to the Republic Cigar-stores and on the other side of the sidewalk I saw the old lady fall down and I thought she would get up herself but in a second she did not get up and I ran over to the other side, on the sidewalk, and helped her up. She had a little square package in her hand when she fell down on the street. The little lady picked that up. The small lady was not walking with the old lady at the time old lady fell down. The small lady was walking up Jackson Street about that far ahead (indicating); I helped the old lady up and the small lady helped on the other side. The small lady asked the old lady, "What is the matter?" and she said, "Oh, I am very sick." Then the small lady asked the old lady where she lived and the old lady said, "Not very far, up on Stockton Street." Then [53] she took the old lady home. I just saw them walk up Jackson Street towards Stockton Street and I just left them. The Republic Cigar store is on the other side of Jackson Street to that on which the old lady fell. It is near Jackson and Stockton Streets. This happened around 8 o'clock in the evening. I did not see the defendants after that until after they were arrested. I had not seen either of them before that time. I didn't know their names.

Cross-examination.

On cross-examination, the witness testified as follows:

I didn't tell nobody about picking this old lady up. I never saw the old lady after that. The

(Testimony of Lee Hong.)

gentleman told me to come up here. I was in the Republic cigar store that day and a white man said, "An old lady fell down on the other side of the sidewalk, who knows it; I said, "I have seen it" and then he told me to come down here. I had never seen either of these women before.

Redirect Examination.

On redirect examination, the witness testified as follows:

I have a plaster on my neck now; I had it on on the night that I helped these women up. I remember Mr. Wallenstein coming up to the cigar store and inquiring about a man who had a plaster on his neck. My business is a cook.

Mr. COOK.—I would like to recall Lo Kuen with the interpreter, again; she claims that some of her answers were not interpreted in full.

Testimony of Lo Kuen, for Defendant (Recalled).

LO KUEN, recalled, on behalf of defendants, testified as follows: [54]

On the night, about 5 or 6 o'clock, just before Ng Choy Fung asked me to go out and get some medicine, somebody had come there and knocked at the door and asked that I should go out to the street, that is, that I should go out. Some man who came and knocked at the door asked that. I don't know who he was that asked me to open the door; he called "Choy Fung"; that is all I now. I don't know whether it was a white man or a Chinaman. I went to open the door and Choy Fung told me not to open

(Testimony of Lo Kuen.)

it, and she went to open it. She went out and spoke with this person for a few minutes. I don't know what; then Choy Fung came in, and then she told me to go out and get the medicine. She had talked a few minutes with this man and then came in and told me to go. At the time the man knocked at the door I was washing the dishes. I didn't see the person at all, but just heard a voice calling, "Choy Fung." It sounded like a Chinaman's voice.

Cross-examination.

On cross-examination, witness testified, as follows:

Mr. THOMAS.—Q. Did you give the testimony which you have just given, to the interpreter when you were on the stand awhile ago?

A. I answered before.

When I went out of the door I did not see a man there in the hall. I did not see a man on the steps. The man said, "Choy Fung some." "Some" means Auntie, "Auntie Choy Fung." I did not hear this man talking to Choy Fung. She went out and pulled the door to and went to the man.

Testimony of Ng Choy Fung, for Defendants.

NG CHOY FUNG, one of the defendants, being first duly sworn, testified as follows: [55]

The first time I ever met this little woman, Lo Kuen, I went to Chun Sing Tungs for medicine and I fell down on Jackson Street on the way back. After I fell down there was a man picked me up. Then this young lady came and she got hold of me by

(Testimony of Ng Choy Fung.)

the arm. I thanked the gentleman. I don't know who he was. Then this young lady took me home. I opened the door myself. I tried to open the door but I was unable to; then she took hold of my key and opened it herself. There was a man there brought me along. That man there lives in the next room to room 2; I knew him but I have not seen him for awhile. After Lo Kuen helped me home that night, she came back. She did not stay all night. About five or six o'clock the night I was arrested there was a man came to look for me. He came and knocked at the door, and I told Lo Kuen not to open the door. I went and opened the door myself. When he came there I thought he was coming there for opium. Lo Kuen went after the tea, that is, after the medicine. She came back again about eight or nine o'clock. I was sick, and when she came there I had given her the key, and went to sleep. Then I asked her to make the medicine. Then I saw the condition that I was sweating, and I told her to boil some water for me to wash my body with. Then after she had rubbed my body, I told her not to go, to wait a while. You see, I was feeling quite sick, and I asked her not to go away. I told her to lie down a while on the bed. When the police officers knocked on my door before I was arrested I was rubbing my body. I said for them to wait until I had my clothes on, that for a woman to appear without clothes was not proper. Lo Kuen could not see any opium like this in that room at any time; [56] it was no concern of hers.

(Testimony of Ng Choy Fung.)

The man brought this stuff into that room where I was. I didn't know when the man—when I had gone out to get some medicine, I came back, and I was not aware that a man had come, and I didn't know really that he had brought the opium. He never mentioned it to me, what it was at the time. On the night of my arrest, about five or six o'clock, after I sent Lo Kuen out, that man appeared in my room. They were two men that had brought the opium. They were Chinese. The name of one was Ah Kwai—I don't know what his surname was. I don't know where he is now. After the advertising was made by the custom-house officers he got away and I have not seen him since. There was one white man that had very big whiskers. There was a Chinaman that had a moustache; that was a man who came to buy opium; I don't know whether he came to buy it or sell it; I don't know which. That night after I sent Lo Kuen out there were two whites that carried the opium; they were probably like expressmen or something. That is what I made them out to be. There were two men came that night after Lo Kuen went out after the medicine or tea as I have translated it. One of these men was a Chinaman with a moustache. There were no talk between them; they brought their scales there with them. There was a man that had a moustache and he wanted opium. The one that had the moustache wanted opium, and they brought out two—I said that this was not the place to sell opium, for them to take it out somewhere else to be sold. I said to them I

(Testimony of Ng Choy Fung.)

would not have it sold here, they could take it out somewhere else to sell. Then they had a quarrel there. I opened the door for them to go out and they did not return. Ah Kwai, I had seen him formerly, he is a sailor; at the time [57] of the earthquake I had gone into the country on a farm; then I met him after I came back to San Francisco again on Stockton Street; then he called me by name, Ng Choy Fung, but I did not recognize him. He said, "Are you living here?" and I said, "Yes." He asked if I had opium, and I said, "Yes, I have." He then asked me if I lived here and I said, "Yes." He says, "I want to go and sit down awhile." Then I said, he being a friend, invited him in. Then he went out. Then the next morning early he came back and then he knocked at the door, and then he asked for Ng Choy Fung and I answered that I was Choy Fung, and I wondered why somebody came there to look for me, and I asked him who he was looking for, and he said, "I want to see you awhile." Then I asked him what he wanted to see me for. Then he said, "You open the door." Then I said, "No, I can't open the door for you. Tell me what you want." Then he just kept knocking. Then I opened the door for him. Then I asked "What is it about?" Then he said "Don't make a noise." Then I asked, "What have you come for?" and he said, "Don't make a noise." Then I said, "What is it, tell me what it is." Then he brought the opium. He said that a man on the floor above had promised to carry the opium to the place and he said that he

(Testimony of Ng Choy Fung.)

had promised the night before that he would bring opium in the morning, that this party would take it, not to my place, but to his place, to take the opium not to my place but to his place. Then he was not able to get into the room above and he brought it to mine. That was Monday, in the morning, before the arrest. This opium was no concern of Lo Kuen's at all. I was the only one. As to how the opium got under the floor there, under that linoleum, when he brought it that time, it was not a few but he had a whole lot of stuff; he put the [58] whole business down near the bed and put some on the shelves. I said, "I use that bed for sleeping, you couldn't have it there." The men that brought the opium were two white people. The boy wanted to have the opium at my bed, and I says, "No, you cannot have it there." I don't know anything about that hole where the opium was. That place did not belong to me. Ah Quai was the name of the man that came and knocked at the door about 5 or 6 o'clock in the evening of the day I was arrested, and I asked Lo Kuen to go out. I don't know where Ah Quai lives. Before the earthquake I knew him. He is a Chinese; we called him "Uncle Ah Quai." Before the earthquake he lived in Spanish Alley (Spofford Alley). Before the earthquake he told me that he lived in Spofford Alley, but I do not know what work he did. I don't know what work he is doing now, I have been to the potato ranch, so I don't know. He is not so tall as the interpreter here, between 40 and 50 years of age. The man that came

(Testimony of Ng Choy Fung.)

with him had a moustache but he didn't have a moustache; the one that came didn't know whether he came to buy or to sell. I don't know the name of the man that came with him. They had gone when Lo Kuen went out the door; not very long after Lo Kuen went out they came back. Ah Quai and the man with the moustache came in; I don't know but they brought scales; they got into a quarrel and they left the scales and then went away. The man that carried the opium in was a white man but the man that came with Ah Quai, with the moustache, was a Chinaman. I had not sent for those men that night. I didn't know those people. I was farming and I didn't know them. I didn't know they were opium men when they came to the door on the night that I was arrested when Lo Kuen was [59] out; I would not have opened the door if I had known. They knocked at the door and I thought that they were coming to get the opium, and so I opened the door. They brought the opium on Monday morning, about 8 or 9 o'clock may be, previous to this night. I don't know whether the men who brought the opium had a wagon or not. I met Ah Quai on Sunday on the stairway when I went out for medicine. It was on Monday they brought the opium. It was Ah Quai that knocked on the door on Monday; then I opened the door and said, "I have not seen you for a long time, I have been farming." I thought it was a friend that was bringing a doctor; I had been sick, so I opened the door, and instead of that it was opium he had.

(Testimony of Ng Choy Fung.)

There were two white men and Ah Quai. One of the white men was a tall man with very much whiskers; the other was a young man in his 'teens. I don't know their names. I had never seen them before; I didn't know them at all. Ah Quai told me the opium was for the place upstairs, and they could not get an entrance there, and so they wanted me to leave it here a little while. I don't know who the man upstairs was. Ah Quai did not say anything to me about opium when I saw him on the street on Sunday. I didn't give Ah Quai or the white man any money for the opium they brought on Monday. They did not give me any money. All they said was, "Just leave it there a little while and we will take it out." They brought the opium in this trunk, they emptied the trunk and then they put the opium in different places; that is, they put some up on the shelves. They took the trunk away until the day that I was arrested, then they brought it back. I did not tell Dr. Gardiner in Mr. Tidwell's office the day after I was arrested that I paid \$200 for all that [60] opium. He asked me if I smoked opium and I said I had smoked about \$200 worth. I did not tell Dr. Gardiner in Mr. Tidwell's office that a white man sold me all of that opium, very much—for \$200. I smoke opium myself, and I was talking about my own smoking. I don't know the family name of Ah Quai. Altogether it was three times Ah Quai called into my room during that week. If you were counting when he came without any opium then it was four times. Sunday when I

(Testimony of Ng Choy Fung.)

met him on the steps was the first time; the next morning when he brought the opium was the next time; when he came with that other man, the time that I sent Lo Kuen out, it was the third time. I would not let him come in the third time. Before I was in room No. 7. In September, 1914, I went in room 2 to live, the front room because I was so sick. Nobody lived there with me before Lo Kuen was there. I am not quite certain whether it was September, 1914, or not, but from the time going into that room until Lo Kuen came there to stay with me I was alone. I cooked in the room. I paid the rent. I paid for the gas. Ah Ping occupied room 2 before I did. I don't know what his first name is. In January, 1915, I was at the ranch, at the first camp, Bacon Island. It is near Stockton. In February, 1915, I was at the ranch. In March, 1915, I came back and was sick several months. I could not tell you exactly which month it was that I came back to San Francisco. I have been very sick since I came back. I came back from the ranch either the 4th or 5th month. I come back because I was sick and I rent that room. I stayed in that room from the 9th month when I got in there (September, 1914) until the 4th or 5th month of this year. I slept in that room. Over the holidays I was away. In the [61] 11th month I went away *I went away* for the holidays and this year in the 4th month I came back again, and I was there until I was arrested. I do not know whether or not anybody occupied the room, stayed in the room, when I was not

(Testimony of Ng Choy Fung.)

there. During the holidays I had the keys all the time, for the room was mine. I got the money to pay the rent from September, 1914, to August the 12th of this year on the ranch, from the man there. It was my own money that rented the room. My husband gave me the money. Chun Wah Yee is my husband's name; he is in the country farming; he has never been to that room. I did not stay in that room during January, 1915, I was not there until in the first month.

Mr. THOMAS.—Q. I show you a bunch of nine gas bills made out to See Ping, 1137 Stockton Street, room 2, running from September 18, 1914, to June 16, 1915, and ask you if those are the gas bills that you paid for that room for gas used there?

A. You are asking me a question; I don't know letters and so of course I cannot tell you whether those are they *are* not.

They gave me a receipt for gas bills that I paid, for half a dollar each month.

Thereupon the bunch of nine gas bills were introduced in evidence and marked "U. S. Exhibit 2."

Continuing the witness testified:

I said there was a quarrel between these men in the room before the arrest; the quarrel was about the opium; Ah Quai wanted him to pay money and no money was forthcoming; I did not take any part in the quarrel, I wanted them to take the stuff out. The man with the moustache wanted to take some opium out and the other man, Ah Quai, would not let him [62] take it out without paying some money to him for it.

**Testimony of John E. Gardiner, for the Government
(in Rebuttal).**

JOHN E. GARDINER, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I recognize the defendant, Ng Choy Fung. I interpreted in Mr. Tidwell's office while she was being interrogated. She made a statement to me during that interrogation as to the price of the opium that was found in her room. She said \$200. She said she bought it from a tall white man with lots of whiskers, who spoke Chinese and who was a kind of a seafaring man. She said this tall white man brought in a great big sack and looked her up and would like to get rid of it, sell it to her, and that inasmuch as she was a smoker of opium herself she bought it, she bought the whole of it. She said she bought it very cheap, and the reason was that it was comparatively poor opium.

Cross-examination.

On cross-examination, the witness testified as follows:

I have been present in court since Mr. Jones has been interpreting here for this party. I had no difficulty in translating for her at all. Mr. Jones is correct as to the tense of Chinese verbs; Chinese tense depends on the context. We can indicate time just as well in Chinese as we can in English. The verb is qualified by an adverb. The investigation, as I recall it, was started by Mr. Tidwell; Mr. Enlow came in and also asked a few questions, and I think

(Testimony of John E. Gardiner.)

occasionally Mr. Toland. As I remember it, Mr. Tidwell asked [63] the particular question I am referring to. I did not make any memorandum at the time of my translation. I am testifying now simply from my recollection of that interview which is very clear. I did not make any note of the questions and the answers that were asked and given. I did not soon after that make any summary or memorandum of any kind. I do not know whether any was made at that time in my presence by Mr. Tidwell, or anyone else. My experience has been that there is no more ambiguity to Chinese language than there is to English, especially in a case of this kind where the question as to who brought the opium there was asked not once but several times; and especially also the question was asked, did any Chinese have anything to do with that opium and the answer was none whatever. That circumstance I shall never forget as long as I live. I heard Mr. Jones translate. I tried to follow Mr. Jones' translation very closely, and I was very much surprised at the end of it how well Mr. Jones interpreted it. In translating in the Chinese, you hear a sentence in Chinese, and if you have sufficient knowledge of Chinese and English you translate that into English with the same meaning, not literally word for word. I will illustrate that. If a Frenchman said "Comme vous portez vous," in English you would say as a translator, "How do you do." You would not say "How do you carry yourself" because that would be absurd in English. There was no attorney present

(Testimony of John E. Gardiner.)

at this interview that I know of. As far as I know there was not. I cannot tell if the defendants had conferred with anybody at that time outside of the officers. She was called into the room where I was interpreting, and I interpreted for them. Whether she used opium herself was asked or she volunteered [64] it. She said she used opium herself. One of the officers asked, when she said she bought that for her own consumption, how long do you think that amount of opium would last you, and she said, "Oh, a very short time." That opium was not in her presence at the time, and pointed out, it was in the next room, in full view, the doors were open. I don't know that they took several kinds of opium out of the room. When I put my question the reference was to the lot, her attention was directed to it; as I recall it everything was opened up; I recall also that one of the newspaper reporters suggested taking a photograph of it and have it in the papers because it was such a big amount. That was in another room, but the door was open between. I could see the opium from where I stood, and she was alongside of me so that she could see it. She should have seen it. Whether she had in her mind the amount of opium which she bought for her own use I don't know, except from the fact that her attention was called to the opium and she had previously stated that she had bought it from the white man.

Memorandum Relative to Testimony and Evidence.

The foregoing contains a correct statement of all the testimony given in the case, and all evidence, documentary or oral, offered in the case. [65]

Instructions of the Court to the Jury.

Thereupon, after argument to the jury by counsel, the Court instructed the jury as follows:

It is charged in the indictment that the defendants Ng Choy and Lo Kuen, did on or about the 12th day of August, 1915, in violation of the Act of February 9th, 1909, as amended January 17, 1914, at San Francisco, in this State and District, then and there wilfully, unlawfully, fraudulently and knowingly receive, conceal and facilitate the transportation and concealment after importation, of certain opium, to wit, six hundred and sixty (660) five-tael cans of opium prepared for smoking purposes, which as they, the said defendants and each of them then and there well knew, had been imported into the United States contrary to law. The indictment herein gives rise to no presumption against either defendant, and such indictment is not evidence or proof, and must not be considered or treated as such, or acted upon by the jury as evidence or proof. The defendants can only be convicted if at all, of the precise crime set out in the indictment, and although you may be satisfied that the defendants have been guilty of other offenses, yet they cannot be convicted of the crime set out in the indictment unless the evidence proves to you that they are guilty of that particular crime.

The act under which this prosecution is had is as follows: "That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any prepara-

tion or [66] derivative thereof; Provided, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the secretary of the treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law ”

“Sec. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or (and this is the portion with which we are here concerned) shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be punished,—as provided. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.”

“Sec. 3. That on and after July first, nineteen hundred and thirteen, all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the first day of April, nineteen hundred and nine,

and the burden of proof shall be on the claimant or the accused to rebut such presumption.” [67]

These provisions are made a part of the law because of the difficulty of proving guilty knowledge, and render it necessary only that the Government prove that the defendants had after July 1st, 1913, smoking opium in their possession, when the presumption at once arises that it had been imported after April 1st, 1909—and such possession imputes to the defendants a guilty knowledge sufficient to warrant a conviction, unless the defendants shall explain such possession to your satisfaction. If therefore you are satisfied from the evidence beyond a reasonable doubt that defendants did have possession of this opium, and that it was smoking opium, then such possession will be sufficient to warrant a conviction, unless the defendants have explained such possession to your satisfaction.

The defendants are presumed to be innocent, and this presumption has the weight and the effect of evidence in their behalf, and it continues to operate in their favor until it is overcome by competent evidence; if the evidence introduced in this case does not overcome this presumption of innocence to your satisfaction, to a moral certainty, and beyond all reasonable doubt, you must find the defendants not guilty. But this presumption must be considered by you in connection with the presumptions created by the statute which has been read to you. It is not necessary for the defendants to prove their innocence but the burden rests upon the prosecution to establish every element of the crime with which they

are charged, and every element of the crime must be established to a moral certainty, and beyond all reasonable doubt. If the prosecution fails to establish to a moral certainty and beyond all reasonable doubt any one element of [68] the crime with which the defendants are charged, and which it is necessary to establish, in order to convict, or if there remains in the minds of the jurors a reasonable doubt as to whether or not the prosecution has established any element constituting the crime to a moral certainty, and beyond a reasonable doubt, then you must find the defendants not guilty. Mere probabilities or suspicions are not sufficient to warrant a conviction, nor is it sufficient if upon the doctrine of chance it is more probable that the defendants are guilty than innocent. If the evidence leaves it uncertain which of two or more inferences from the fact proven is the true inference you must adduce that inference which is most favorable to the defendant, and if after considering all the evidence in this case you are able to conscientiously reconcile such evidence upon any reasonable theory consistent with the defendants' innocence, you should do so. You are the exclusive judges of the weight of the evidence and credibility of the witnesses; and under your oaths, as jurors, you may take into consideration only such evidence as has been admitted by the court, and you should in obedience to your oaths disregard and discard from your minds every impression or idea suggested by questions asked by counsel which were objected to, and which objections were sustained. The defendants are to be tried on the evidence before

you and not on suspicions which may have been excited by questions of counsel, answers to which are not permitted.

Where a defendant takes the witness-stand, her evidence is to be judged by the same rules which are to be applied in determining the credibility of any other witness. That is, she is not to be discredited merely upon the ground [69] that she is the defendant. You are to accord her the same fair and impartial consideration of her evidence, when viewed in the light of all the other facts in the case as you would the testimony of any other witness standing in any other relation to the case. You cannot find the defendants guilty of any offense alleged in the indictment except upon the specific kind of opium as described in the indictment. You should consider the evidence in this case and apply it as though each of the defendants were being separately tried, and you are not to indulge in any inference or presumption against either of the defendants because she is being jointly tried with the other defendant. Although you might find from the evidence that the defendant, Ng Choy Fung, has been, or is, a user of opium, you are not to indulge in any inference or presumption against her as establishing in any way her guilt of any offense charged in the indictment. If the jury find that defendant Ng Choy Fung received the opium into her room, knowing it was smoking opium that had theretofore been imported contrary to law, and permitted it to remain there, the jury will be warranted in finding that in so doing she did receive and conceal, and facilitate the con-

cealment of such opium as charged in the indictment. If you find from the evidence that the defendant Lo Kuen was merely present in the room where the defendants were arrested as a nurse or attendant of the defendant Ng Choy Fung, and that she had no dominion over the room or the contents thereof, and had nothing to do with its presence there, or if you have any reasonable doubt of these facts, you should find her not guilty.

While before you can find a defendant guilty of the charge alleged in the indictment, the evidence must satisfy you [70] as to his guilt beyond a reasonable doubt, yet this does not mean that the Government must prove its case to an unassailable demonstration. The term reasonable doubt means just what its language imports. To be a reasonable doubt it must be based upon reason. There is hardly anything relating to human affairs that is not open to some possible or fanciful or imaginary doubt. Mere possible or fanciful or imaginary doubts are not reasonable doubts. But a reasonable doubt is defined to be that state of the case which, after an entire comparison of all the evidence, leaves the minds of the jury in that condition that they cannot say that they have an abiding conviction to a moral certainty of the truth of the charge.

It requires the concurrence of all of you to agree upon a verdict, and if you so agree you will have such verdict signed by your foreman and returned into court.

Thereupon, the jury retired to deliberate upon a verdict, and subsequently returned into court and

rendered a verdict of not guilty as to the defendant Lo Kuen and a verdict of guilty as to the defendant Ng Choy Fung. [71]

Presentation of Bill of Exceptions, Notice Thereof, and Stipulation for Settlement and Allowance.

The defendant Ng Choy Fung hereby presents the foregoing as her proposed Bill of Exceptions herein and respectfully asks that the same may be allowed.

GEO. J. HATFIELD,

Attorney for Defendant Ng Choy Fung.

To John W. Preston, United States District Attorney, and to M. A. Thomas, Esq., and Mrs. Annette A. Adams, Assistant United States Attorneys:

Gentlemen:

YOU WILL PLEASE TAKE NOTICE that the foregoing constitutes and is the proposed Bill of Exceptions of the Defendant NG CHOY FUNG in the above-entitled action, and that said defendant will ask the allowance of the same.

GEO. J. HATFIELD,

Attorney for Defendant Ng Choy Fung.

IT IS HEREBY STIPULATED that the foregoing Bill of Exceptions is correct and that the same may be settled and allowed by the Court.

GEO. J. HATFIELD,

Attorney for Defendant Ng Choy Fung.

Service by receipt of copy hereby admitted this Feb. 19, 1916.

JNO. W. PRESTON,

U. S. Atty.

[Endorsed]: Lodged Feb. 19, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. Filed by Order of Court, June 23, 1916. W. B. Maling Clerk. By Lyle S. Morris, Deputy Clerk. [72]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 5779.

THE UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG and LO KUEN.

Verdict.

We, the jury, find Ng Choy Fung, the defendant at the bar, Guilty.

H. E. LELAND,

Foreman.

[Endorsed]: Filed Dec. 22, 1915, at 4 o'clock P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [73]

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 5779.

THE UNITED STATES OF AMERICA,

vs.

NG CHOY FUNG.

Judgment on Verdict of Guilty.

Convicted violation act February 9, 1909, as amended
by Act of January 17, 1914.

M. A. Thomas, Esq., Assistant United States Attorney, and the defendant, in her own proper person and with her counsel Wm. H. Cook, Esq., came into court. The defendant was duly informed by the Court of the nature of the Indictment filed on the 27th day of September, A. D. 1915, charging her with the crime of receiving, concealing and facilitating transportation and concealment after importation of 660 five-tael cans of opium; of her arraignment and plea of Not Guilty; of her trial and the verdict of the jury on the 22d day of December, A. D. 1915, to wit: "We, the Jury find Ng Choy Fung, the defendant at the bar Guilty. H. E. Leonard, Foreman."

The defendant was then asked if she had any legal cause to show why judgment should not be entered herein, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial, thereupon the Court rendered its judgment:

THAT WHEREAS, the said Ng Choy Fung having been duly convicted in this court of the crime of receiving, concealing and facilitating transportation and concealment after importation of 660 five-tael cans of opium:

IT IS THEREFORE ORDERED AND ADJUDGED that the said Ng Choy Fung be imprisoned in the county jail, city and county of San Francisco, California, for the period of one (1) year.

Judgment entered this 3d day of January, A. D. 1916.

W. B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 6, Judg., and Decrees, at page 437.
[74]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 5779.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FONG and LO KUEN,

Defendants.

Petition for Writ of Error.

Your petitioner, Ng Choy Fong, defendant in the above-entitled cause, brings this her petition for a Writ of Error to the District Court of the United States, in and for the Northern District of California, First Division, and in that behalf your petitioner says:

That on the 3d day of January, 1916, there was made, given, rendered and entered in the above-entitled court and cause a judgment against your petitioner wherein and whereby your petitioner said Ng Choy Fong, was adjudged and sentenced to imprisonment for one (1) year in the county jail

of the city and county of San Francisco, State of California; and your petitioner says that she is advised by counsel, and she avers that there was and is manifest error in the records and proceedings had in such cause, and in the making, giving, rendition and entry of such judgment and sentence, to the great injury and damage of your petitioner; all of which error will be more fully made to appear by an examination of the said record and by an examination of the bill of exceptions by your petitioner tendered and filed, and in the assignment of errors hereinafter set out, and to that end thereafter that the said judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner now prays that a writ of error may be issued and directed [75] therefrom to the said District Court of the United States, in and for the Northern District of California, First Division, returnable according to law and the practice of the Court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, bill of exceptions, assignment of errors and all proceedings had in said cause; that the same may be removed unto the United States Circuit Court of Appeals, for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected, and full and speedy justice done your petitioner.

And your petitioner now makes the assignment of errors attached hereto, upon which she will rely, and which will be made to appear by return of the said record, in obedience to the said writ.

WHEREFORE, your petitioner prays the issuance of a writ, as herein prayed, and prays that the assignment of errors annexed hereto may be considered as her assignment of errors upon the writ, and that the judgment rendered in this cause may be reversed and held for naught, and that said cause be remanded for further proceedings, and that she be awarded a supersedeas upon said judgment, and all necessary process, including bail.

Dated this 15th day of January, 1916.

NG CHOY FONG.

GEORGE J. HATFIELD,

Attorney for Defendant.

[Endorsed]: Filed Jan. 15, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [76]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 5779.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FONG and LO KUEN.

Defendants.

**Assignment of Errors on Writ of Error of Defendant
Ng Choy Fong.**

Now comes Ng Choy Fong, defendant in the above-entitled cause and plaintiff in error herein, and makes and files the following assignments of error

upon which she will rely in the prosecution of her Writ of Error in the above-entitled cause:

I.

That the verdict of the jury is contrary to law in that there is no evidence in the case that the defendant ever willfully, unlawfully, knowingly or feloniously received and concealed and facilitated the transportation after importation of six hundred and sixty (660) five-tael cans of, or any opium prepared for smoking purposes;

II.

That the verdict of the jury is contrary to law in that there is no evidence in the case that the defendant ever knew that the opium which she had in her possession had been imported into the United States, contrary to law;

III.

That the verdict of the jury is contrary to law in that there is no evidence in the case that the opium in the possession of the [77] defendant had been imported into the United States contrary to law;

IV.

That the Court erred in charging the jury: "The act under which this prosecution is had is as follows: 'That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: Provided, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasurer is

hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.'

'Sec. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, and opium or any preparation or derivative thereof contrary to law, or (and this is the portion with which we are here concerned) shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be punished,—as provided. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.'

'Sec. 3. That on and after July first, nineteen hundred and thirteen, all smoking opium or opium prepared for smoking found [78] within the United States shall be presumed to have been imported after the first day of April, nineteen hundred and nine, and the burden of proof shall be on the claimant or the accused to rebut such presumption.'

These provisions are made a part of the law because of the difficulty of proving guilty knowledge, and render it necessary only that the Government

prove that the defendants had after July 1st, 1913, smoking opium in their possession, when the presumption at once arises that it had been imported after April 1st, 1909,—and such possession imputes to the defendants a guilty knowledge sufficient to warrant a conviction, unless the defendants shall explain such possession to your satisfaction. If therefore you are satisfied from the evidence beyond a reasonable doubt that defendants did have possession of this opium, and that it was smoking opium, then such possession will be sufficient to warrant a conviction, unless the defendants have explained such possession to your satisfaction.”

V.

That the Court erred in admitting evidence in regard to the customs officers, E. E. Enlow and John Toland finding opium in small jars in room number 2 at 1137 Stockton Street, in the city and county of San Francisco, California.

VI.

That the Court erred in admitting evidence in regard to what the customs officers E. E. Enlow and John Toland found in said room the day following the arrest of the two defendants.

VII.

That the Court erred in pronouncing sentence against the defendant.

VIII.

That the Court erred in denying the motion of defendant Ng [79] Choy Fong for a new trial.

WHEREFORE, this defendant and plaintiff in

error prays that the judgment in said District Court may be reversed.

GEORGE J. HATFIELD,

Attorney for Defendant and Plaintiff in Error.

United States of America,
Northern District of California,
First Division,—ss.

I hereby certify that the foregoing assignments of error are made on behalf of the petitioner for a Writ of Error herein, and are in my opinion well taken and the same now constitute the assignments of error upon the Writ prayed for.

GEORGE J. HATFIELD,

Attorney for Defendant and Plaintiff in Error.

Receipt of copy of assignment of Error admitted this 15th day of Jan., 1916.

JNO. W. PRESTON,

U. S. Atty.

[Endorsed]: Filed Jan. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [80]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 5779.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FONG and LO KUEN.

Defendants.

Order Allowing Writ of Error and Supersedeas.

The writ of error and the supersedeas therein prayed for by the defendant Ng Choy Fong, pending the decision upon the writ of error, are hereby allowed, and defendant Ng Choy Fong is admitted to bail upon the writ of error in the sum of six thousand dollars (\$6000).

The bond for costs upon the writ of error is hereby fixed at the sum of two hundred fifty dollars (\$250).

Dated this 15th day of January, 1916.

M. T. DOOLING,

District Judge of the United States, for the Northern
District of California, First Division.

[Endorsed]: Filed Jan. 15, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [81]

Writ of Error (Copy).

UNITED STATES OF AMERICA,—ss.

The President of the United States of America.

To the Honorable, the Judges of the District
Court of the United States for the Northern
District of California, Greeting:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Ng Choy Fong, Plaintiff in Error, and United States of America, Defendant in Error, a manifest error hath happened, to the great damage of the said Ng Choy Fong, Plaintiff in Error, as by her complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the patries aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 31st day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal]

W. B. MALING.

Clerk of the United States District Court, Northern District of California, First Division.

By C. W. Calbreath,
Deputy Clerk.

Allowed by

M. T. DOOLING,

United States District Judge. [82]

Service of the within Writ of Error by copy admitted this 31 day of August, 1916.

JNO. W. PRESTON,
Attorney for U. S.

[Endorsed]: Filed Aug. 30, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [83]

Citation (Copy).

UNITED STATES OF AMERICA,—ss.

The President of the United States, to United States
of America, John W. Preston, United States
District Attorney, Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden at the city of
San Francisco, in the State of California, within
thirty days from the date hereof, pursuant to a
writ of error duly issued and now on file in the
clerk's office of the United States District Court for
the Northern District of California, First Division,
wherein Ng Choy Fung is plaintiff in error, and you
are defendant in error, to show cause, if any there
be, why the judgment rendered against the said
plaintiff in error, as in the said writ of error men-
tioned, should not be corrected, and why speedy jus-
tice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOL-
ING, Judge of the United States District Court of
the Northern District of California, this 31 day of
August, A. D. 1916.

M. T. DOOLING,

United States District Judge.

Service of the within Citation on W. of Error by
copy admitted this 31 day of August, 1916.

JNO. W. PRESTON,

Attorney for U. S.

[Endorsed]: Filed Aug. 31, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [84]

*In the District Court of the United States for the
Northern District of California, First Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FUNG,

Defendant.

**Stipulation and Order Extending Time to February
5, 1916, to Serve Bill of Exceptions.**

It is hereby stipulated and agreed by and between
the respective parties hereto, that the time of the
defendant, Ng Choy Fung, in the above-entitled ac-
tion for serving her proposed Bill of Exceptions
upon the plaintiff herein may be, and the same is
hereby, extended and enlarged to and including the
5th day of February, 1916.

Dated San Francisco, Cal., January 5, 1916.

JNO. W. PRESTON,

By M. A. THOMAS,

Assistant United States District Attorney.

GEO. J. HATFIELD,

Attorney for Defendant.

So ordered.

Dated January 5, 1916.

M. T. DOOLING,

United States District Judge.

[Endorsed]: Filed Jan. 5, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [85]

*In the District Court of the United States for the
Northern District of California, First Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG CHOY FUNG,

Defendant.

**Stipulation and Order Extending Time to February
19, 1916, to Serve Bill of Exceptions.**

It is hereby stipulated and agreed by and between the respective parties hereto, that the time of the defendant, Ng Choy Fung, in the above-entitled action, for serving her proposed Bill of Exceptions upon the plaintiff herein, may be, and the same is hereby, extended and enlarged to and including the 19th day of February, 1916.

Dated San Francisco, Cal., February 5, 1916.

M. A. THOMAS,

Assistant United States District Attorney.

GEORGE J. HATFIELD,

Attorney for Defendant.

So ordered.

Dated February 5, 1916.

M. T. DOOLING,

United States District Judge.

[Endorsed]: Filed Feb. 5, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [86]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 5779.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NG. CHOY FUNG and LO KUEN,

Defendants.

**Stipulation and Order Continuing Time for
Settlement of Defendant's Bill of Exceptions to
and Into the March Term, 1916.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
time for the above-entitled court to settle the Bill of
Exceptions of defendant Ng Choy Fung, upon Writ
of Error herein, may be continued and extended
from the present November term, 1915, to and into
the next succeeding March term, 1916, of said court.

Dated at San Francisco, Cal., February 19, 1916.

JNO. W. PRESTON,

United States District Attorney.

GEO. J. HATFIELD,

Attorney Defendant and Plaintiff in Error.

Now, on this day, in the November term, 1915, pur-
suant to the above stipulation, and good cause ap-
pearing therefor, IT IS HEREBY ORDERED
that the time for this Court to settle the Bill of Ex-
ceptions of the defendant Ng Choy Fung, upon the
Writ of Error herein, be, and the same is, hereby

continued [87] and extended from the November term, 1915, to and into the next succeeding March term, 1916, of this court.

Dated at San Francisco, Cal., February 19, 1916.

M. T. DOOLING,
Judge of Said Court.

[Endorsed]: Filed Feb. 19, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [88]

**Certificate of Clerk U. S. District Court to
Transcript on Writ of Error.**

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 88 pages, numbered from 1 to 88, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of the United States of America vs. Ng Choy Fung, Number 5779, as the same now remain on file and of record in this office; said Transcript having been prepared pursuant to and in accordance with the "Praecipe for Transcript" (a copy of which is embodied herein), and the instructions of the attorney for defendant and plaintiff in error.

I further certify that the costs for preparing and certifying the foregoing Transcript on Writ of Error is the sum of forty-eight dollars and sixty cents (\$48.60), and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto is the Original Citation on Writ of Error (page 92) and the Original Writ of Error

(page 90), with the return of the said District Court to said Writ of Error attached thereto (page 91).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27 day of September, A. D. 1916.

[Seal]

WALTER B. MALING,
Clerk.

By T. L. Baldwin,
Deputy Clerk. [89]

Writ of Error (Original).

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Ng Choy Fung, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Ng Choy Fong, plaintiff in error, as by her complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this

writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 31st day of August, in the year of our Lord one thousand nine hundred and sixteen.

[Seal]

W. B. MALING,
Clerk of the United States District Court, Northern
District of California, First Division.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:

M. T. DOOLING,
United States District Judge. [90]

Service of the within Writ of Error, by copy admitted this 31 day of Aug., 1916.

JOHN W. PRESTON,
Attorney for U. S.

[Endorsed]: No. 5779. United States District Court for the Northern District of California. Ng Choy Fong, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Aug. 30, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this Writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was on the 25th day of September, A. D. 1916, duly lodged in the case in this Court for the within named defendant in error.

By the Court:

[Seal]

WALTER B. MALING,
Clerk, United States District Court, Northern District of California.

By T. L. BALDWIN,
Deputy Clerk.

CMT.

[91]

Citation on Writ of Error (Original).

UNITED STATES OF AMERICA,—ss.

The President of the United States, to United States of America, John W. Preston, United States District Attorney, Greeting:

You are hereby cited and admonished to be and

appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, First Division, wherein Ng Choy Fung, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, Judge of the United States District Court of the Northern District of California, this 31 day of August, A. D. 1916.

M. T. DOOLING,

United States District Judge. [92]

Service of the within Citation on W. of Error by copy admitted this 31 day of Aug., 1916.

JOHN W. PRESTON,

Attorney for U. S.

[Endorsed]: No. 5779. United States District Court, for the Northern District of California. Ng Choy Fung, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Aug. 31, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 2864. United States Circuit Court of Appeals for the Ninth Circuit. Ng Choy Fong, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the District Court of the United States for the Northern District of California, First Division.

Filed September 29, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.*

NG CHOY FONG,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation and Order Enlarging Time to September
1, 1916, to File Record and Docket Cause.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the plaintiff in error, Ng Choy Fong, herein for filing the record hereof, and docketing this case on Writ of Error, from the District Court of the United States, for the Northern District of California, First Division, to the United States Circuit Court of Appeals, for the Ninth Circuit, may be en-

larged to and including the 1st day of September, 1916.

Dated San Francisco, Cal., June 23d, 1916.

JOHN W. PRESTON,
United States District Attorney.
GEO. J. HATFIELD,
Attorney for Plaintiff in Error.

**Order Enlarging Time of Plaintiff in Error to File
Record and Docket Case.**

Now, on, this day, for good cause shown and pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that the time for the plaintiff in error, Ng Choy Fong, for filing the record and docketing the case on Writ of Error from the District Court of the United States for the Northern District of California, First Division, to the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged to and including the 1st day of September, 1916.

Dated San Francisco, Cal., June 23, 1916.

WM. H. HUNT,
Judge.

[Endorsed]: In the United *States of Appeals*, in and for the Ninth Circuit. Ny Choy Fong, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation Enlarging Time of Plaintiff in Error, Ng Choy Fong, to File Record and Docket Case. Filed June 23, 1916. F. D. Monekton, Clerk.

*In the United States Circuit Court of Appeals, in and
for the Ninth Circuit.*

NG CHOY FONG,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation and Order Enlarging Time to October
1, 1916, to File Record and Docket Cause.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time of the plaintiff in error, Ng Choy Fong, herein for filing the record hereof, and docketing this case on Writ of Error, from the District Court of the United States, for the Northern District of California, First Division, to the United States Circuit Court of Appeals, for the Ninth Circuit, may be enlarged to and including the 1st day of October, 1916.

Dated San Francisco, Cal., August 30, 1916.

JOHN W. PRESTON,

United States District Attorney.

GEO. J. HATFIELD,

Attorney for Plaintiff in Error.

**Order Enlarging Time of Plaintiff in Error to File
Record and Docket Case.**

Now, on this day, for good cause shown and pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that the time for the plaintiff in error,

Ng Choy Fong, for filing the record and docketing the case on Writ of Error from the District Court of the United States for the Northern District of California, First Division, to the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged to and including the 1st day of October, 1916.

Dated San Francisco, Cal., August 30, 1916.

M. T. DOOLING,

Judge.

[Endorsed]: 5779. In the United States District Court of Appeals in and for the Ninth Circuit. Ng Choy Fong, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation Enlarging Time to File Record and Docket Case.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Oct. 1, 1916, to File Record thereof and to Docket Case. Filed Aug. 31, 1916. F. D. Monckton, Clerk.

No. 2864. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to Oct. 1, 1916 to File Record thereof and to Docket Case. Refiled Sep. 29, 1916. F. D. Monckton, Clerk.

